

Commonwealth of Pennsylvania

DEPARTMENT OF AGRICULTURE:  
DAIRY AND FOOD DIVISION

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BULLETIN No. 194

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PRELIMINARY REPORT

OF THE

DAIRY AND FOOD COMMISSIONER

FOR THE YEAR 1909



N. B. CRITCHFIELD, *Secretary of Agriculture*

JAMES FOUST, *Dairy and Food Commission*

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Harrisburg, Penn'a., *December 31, 1909.*

Hon. N. B. Critchfield,

*Secretary of Agriculture,*

Dear Sir: I have the honor to submit herewith a preliminary report of the Dairy and Food Division of the Department of Agriculture for the year ending December 31, 1909. It covers the operations for the year and contains such other details as may be useful for public information. I have the honor to remain,

Very respectfully,

JAMES FOUST,

*Dairy and Food Commissioner.*



## PREFACE.

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Owing to the fact that the full Report of the Department of Agriculture for the year 1909, containing the Reports of the several Divisions of the Department will not be ready for distribution for some weeks, the Dairy and Food Commissioner has wisely concluded to furnish the Head of the Department with the following preliminary report; and in order that the information it contains may have as speedy and wide circulation as possible, its publication as a bulletin of the Department is authorized.

A much fuller report of the operations of the Dairy and Food Bureau will appear in the regular Annual Department Report.

N. B. CRITCHFIELD,

*Secretary of Agriculture.*



# PRELIMINARY REPORT OF THE DAIRY AND FOOD COMMISSIONER.

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## PRELIMINARY REMARKS.

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The year 1909 witnessed a steady advance in popular sentiment favorable to the perfecting of pure food laws and the impartial enforcement thereof. Whereas not many years ago few thought seriously of the quality of the food products distributed through the retail grocers of the country, it is now the rule of the buyer to scrutinize the quality of the goods offered and to be somewhat careful in making his purchases. The literature of the subject has become so abundant and the consequences of food adulteration have been so vividly depicted by professional gentlemen that the area of popular intelligence has been greatly enlarged. The truth of this statement is not only verified by the rapid multiplication of laws throughout the union concerning the manufacture and sale of articles going to make up the common food of the people, but also by the vast increase in books, magazine articles and editorial references to the subject. This phase of the matter was mentioned in my last annual report. There has been no diminution of interest upon the part of the food journals, trade publications, the weekly and monthly magazines, or the daily press. On the contrary, if there has been any change it is in the direction of a more vital and a more intelligent concern for the enactment and enforcement of carefully framed provisions regulating the manufacture and sale of all articles of human consumption. There never was a period in the history of the United States when its people were more truly alive to the importance of the food problem. This interest is alert and eager and is confined to no particular section. It is wide-spread. It is equally manifest among the wage-earners, the wealthy and those who are moderately well-to-do. Anybody who takes up the study of food and the general attitude of the people of the United States toward its manufacture and sale will have little difficulty in arriving at a fairly accurate estimate of the extent and power of this sentiment.

In the earlier days no urgent necessity for such oversight existed; changed conditions have had much to do with the creation of public uneasiness, followed by widespread agitation, and these brought forth

fruit in the shape of the pioneer movements which have developed so satisfactorily in our time and which are destined to still more benefit the consuming public as the years go by. So long as there were no large manufacturing establishments, so long as our cities were small in extent and meager in population, so long as the average housewife put up her own household supply in the summer or autumn, each supplying the wants of her own family and possibly some of her nearby neighbors, there was little reason to complain and small fear that greed would work harm to the health of the consumer by the use of decayed or poisoned goods. The growth of population, the cultivation of the commercial spirit, the seizure of opportunities, the keenness of business rivalry these are some of the things that led to the wholesale adulterations which robbed the consumer of his just due, while endangering his health and shortening his life. And this constant peril became so great at length that the agitation followed which has resulted in so decided an improvement in conditions.

#### UNIFICATION OF STATE AND FEDERAL LAWS.

In recent years there has likewise grown up a sentiment favorable to the unification of State and federal laws relating to the preparation and distribution of food products. It is scarcely contended by anybody that the existing national food and drugs act is the best obtainable; there is a conviction that many of its provisions might be more clearly and precisely defined, and that a few of the decisions made thereunder, which decisions have all the force of law, should undergo modification. In other words, there should be a disposition upon the part of both State and federal officials to secure the best possible legislation, looking to the general end sought—the protection of the consuming public from adulterated and counterfeit goods. If the national law is weak in any respect where the State statutes are strong there should be a willingness to move forward. On the other hand, where State laws are defective and much looser than the federal act, then State legislatures should be willing to make the needed modifications. This should be done at the earliest feasible moment, because it is becoming more and more apparent as the months pass that the utmost efficiency, with the least possible friction, will be attained only when the states and the nation have agreed upon substantially the same provisions.

Uniformity of legislation as well as interpretation would relieve well-disposed manufacturers of food products from many perplexities, considerable trouble and much unnecessary expense and enable them to serve the people in a far more satisfactory manner than is possible at present. Much pure food legislation has been enacted by the several states during the past few years and as there was no consultation among the legislators of the several states, and



comparatively little communication among food officials concerning this important problem, these several acts are very diverse. This imposes a great hardship upon manufacturers whose business is co-extensive with the nation. A product which may be lawfully sold in one state is contraband in another. While the national government may give an article its paternal blessing it may be anathama maranatha in the states, or some of them. The consequence is much vexation of spirit, not only to the manufacturer, but also to the jobber, or to all who have to do with the distribution of the food products of the country. The matter is being widely discussed now and the growing conviction that it will be a happy solution of many national difficulties, as well as a tremendous advantage to the manufacturer will probably become so intense as to lead to appropriate action. I do not believe Pennsylvania will exhibit a spirit of selfishness or any inclination to hang back when the accomplishment of this desirable reform is sought. This reform in the laws is not to be looked for in the immediate future. When it is considered that our union is composed of forty-six separate and independent states, and that uniformity must come through the individual action of the legislatures of these states, supplemented by that of the federal congress, it will be realized that state uniformity is little more than a pleasant dream. While we may labor to bring about that situation which will be least burdensome and expensive to the manufacturers and wholesalers, we may be sure for the present the best that can be expected is a gradual approach to the desired situation.

#### ACTION OF THE LEGISLATURE OF 1909.

The legislature which convened in January of this year devoted considerable attention to the pure food problem. Six acts became law. The first of these will be known as the "Pure Food act, 1909." This act was prepared with the intention of protecting the people of the State from adulterated or misbranded food. To this end its provisions are very sweeping and it is required that any article of food offered in our market shall be precisely what it is represented to be by the label. It was prepared and enacted upon the theory that consumers are entitled to full knowledge concerning the quality of the goods purchased by them.

The act specifically names a large number of chemicals and other products, frequently used by the manufacturer of food products, which are no longer allowed in Pennsylvania. The act is the most comprehensive ever enacted in Pennsylvania. It contains a guaranty clause under the provisions of which the retailer is protected. He must, however, comply with the requirements of the act and procure a proper guaranty from the manufacturer or jobber from whom he purchased his products. Notwithstanding the fact that copies of the act were scattered broadcast, and it was printed in the Monthly

Bulletin, while a special Bulletin containing this and other laws was issued and widely distributed, a number of grocers failed to avail themselves of the protection offered by the act. The result was that they had neither defense nor protection.

#### ADULTERATION OF MILK.

Another needed law went into force March 24, having received approval on that date. This was the act relating to milk, and providing penalties for the addition of water to milk or for skimming the butter-fat or any portion thereof therefrom. The act permits the sale of skimmed milk if frankly put on the market as such. No cream is to be sold unless it contains fifteen per centum of butter-fat. The fact that good milk is essential to the preservation of the health of small children and of invalids rendered the enactment of such a law quite essential if the state meant to do its duty by the helpless. By the provisions of section 5 of this act it in no way affects the act of June 10, 1897, providing against the use of so called preservatives, or the act of April 19, 1901, amending the first section of the act of June 10, 1897.

#### NON-ALCOHOLIC BEVERAGES.

The act regulating the manufacture and sale of non-alcoholic drinks marked an important advance in the attitude of our commonwealth toward the making and selling of this class of beverages. The law now on the statute books received the approval of Governor Stuart March 11, 1909, and strenuous efforts have been made to enforce it. That it was urgently needed was known by all who have given the state of the soft drink market any attention. Since the passage of the law a very great improvement has been noticed and there is reason to believe that within a short time all non-alcoholic beverages sold in the State will be free from dangerous adulterants. It is to be hoped, now that President Taft has given an official definition of the word "whiskey," the legislature of 1911 will find it a comparatively easy task to frame and enact a proper law for the regulation and sale of alcoholic beverages within the limits of the State.

#### THE ICE-CREAM ACT.

Another important act of the Legislature of 1909 was the "Ice Cream Act." This bill was framed with the co-operation of the leading manufacturers of ice cream of the State. The act prohibits the use of boric acid, formaldehyde, saccharin or any other added substance that is injurious to health. It also forbids the use of iron oxide ochres, salts of copper or any coloring substance deleterious to health, and fixes the minimum butter-fat allowable in ice-cream and contains other provisions calculated to protect the public from injury or deception.

## TRAFFIC IN DECAYED EGGS.

In my former report attention was called to the horrible condition of affairs found to exist in the city of Philadelphia in connection with the traffic in decayed eggs. In view of the conditions revealed by the investigation undertaken by this bureau and carried to completion, the Legislature enacted a law early in the session for the protection of the public health, prohibiting the sale of eggs unfit for food. The act is a comprehensive one, and was approved by Governor Stuart March 11, 1909, and a systematic effort has been made to break up entirely the hideous traffic it was meant to cure. The act has been followed by a very decided decrease in the traffic in spoiled eggs.

## THE LARD ACT.

A bill was also passed prohibiting deception in the manufacture or sale of lard or any of the substitutes therefor. The manufacture or sale of such substitutes for genuine lard or of lard compounds is not prohibited. It is provided, however, that they shall contain nothing injurious to health and that the label shall plainly set forth the exact nature of the article exposed for sale.

## PUBLICATION OF THE LAWS.

The six acts referred to constitute the body of legislation enacted at the session of 1909, regulating the manufacture and sale of food products and providing for better protection and the fuller information of the consumer. A special Bulletin was issued containing not only the newly enacted laws but also the entire body of laws pertaining to pure food and drinks now on the statute books, together with extracts from important decisions of the courts concerning the meaning and effect of these acts, and every effort has been made to instruct retail dealers thoroughly concerning their duties and privileges.

The care taken by the Legislature to protect the retailer from indictment and punishment for the sins of the manufacturer was the result of a conviction among legislators and others that the grocer should not be held responsible for the sins of the manufacturer. Ordinarily the grocer is not competent to analyze the goods placed on his shelves, and, like the consumer, he must take the word of the manufacturer. That he might have no just cause of complaint the State provides entire immunity for him if he will simply take advantage of the way of escape opened up for his use. In order that conviction may follow the grocer must ignore the provisions concerning the guaranty or he must persist in selling prohibited goods after being warned by an agent of the pure food bureau.



## A YEAR OF ACTIVITY.

The year has been one of great activity and special effort has been made by means of the Bulletin, by personal communication, by explanation by word of mouth and by the circulation of copies of the laws and the rules made thereunder, to educate dealers and consumers to a knowledge of the said laws as well as to an interest in their own health and the health of their families and neighbors. The bureau has been conducted on the principle that it is better to secure the co-operation of dealers and manufacturers than to invoke the severities of the laws made for the punishment of persistent evil doers. It is a source of no particular satisfaction to know that the receipts from fines have been so large; at the same time it is as true now as it was in other days that the way of the transgressor is hard.

## NO UNNECESSARY PROSECUTIONS.

It has not been the policy of the bureau to overload the courts with prosecutions. The idea has been rather by a few test cases to direct the attention of those concerned to the requirements of the various acts of assembly and the necessity of complying with those requirements. It has been thought that the cause of pure food would be best promoted by moderation in respect to matters wherein some uncertainty might be presumed to exist and whenever it was pretty certain that the decision of a court of justice in one instance would so illuminate the subject as to induce other manufacturers and dealers to resolve to avoid similar violations of the particular act involved. What is sought most earnestly is the creation of a public sentiment that will insist upon obedience to the acts which have been made into laws for the preservation of the health of the people. The illumination furnished by a single case brought to the attention of a prominent court is often sufficient to bring about a new departure by those who furnish the food of the people. There is reason to believe that this policy has produced good results.

## THE SALE OF OLEOMARGARINE.

The sale of oleomargarine or butterine is recognized as entirely legitimate in this Commonwealth, provided it be conducted under certain well-defined limitations and in accordance with certain regulations which experience has taught to be desirable for the protection of the important dairy interests of the state as well as the consuming public. The sale of colored oleomargarine is forbidden under any conditions and the law requires that oleomargarine or butterine shall be plainly marked by the retailer who handles it. This act became law for the reason that many dealers had formed the habit of selling the artificial product as genuine butter. The price was always sufficiently below that asked for real butter to give the counterfeit

the preference with the economical buyer. The result was continued deception of the purchaser and injury to the legitimate butter interests of the state. As a result the act of May 29, 1901, was placed on the statute books and the Dairy and Food Commissioner instructed to enforce the same, the act entering into every contingency liable to occur at the time of its enactment and providing severe punishment for any who violated its provisions. Taken with the federal act taxing colored oleomargarine ten cents a pound it was hoped that the practice complained about by the dairymen and farmers would come to an end, but the hope has not been justified.

#### OFFENDERS TRIED AND PUNISHED.

Violations of the law have continued and the agents of the Bureau have been compelled to take many offenders into court. In the annual report for 1908 the conditions which were found to exist in Philadelphia were detailed. It was shown that the men who were engaged in the manufacture of oleomargarine into "genuine yellow butter" were doing their work in foul cellars and stables as regardless of sanitary conditions as they were disobedient to law. A determined and successful effort was made to break up this nefarious practice. Some of the worst offenders were arrested and convicted, receiving punishment bearing some proportion to the magnitude of their offense against the health of their customers. During the year 1909 the activity of the violaters of the oleomargarine act was largely transferred to the western part of the state. They were especially busy in Allegheny county and became so bold as to require heroic treatment. The records show that over two hundred prosecutions were successfully terminated in Allegheny county and that many of the more notorious offenders were heavily fined and sent to prison for a term sufficiently long to give them ample time for reflection and repentance.

#### AN INTRICATE PROBLEM.

One of the most vexatious problems that now confronts the administration of the Dairy and Food department is the proper enforcement of the oleomargarine act. The records of the Bureau, hereafter exhibited, show that there has been no lack of vigilance by its agents. The Commissioner finds himself between two fires. The manufacturers and dealers in oleomargarine or butterine claim that their product is a legitimate trade commodity and that it should not be brought under the operation of the criminal code. The dairymen and farmers as well as the consuming public, on the other hand, have right on their side when they strongly insist that butter should not be subjected to the unfair competition of oleomargarine masquerading as genuine yellow butter. Some rulings of the National Pure Food department in pronouncing oleomargarine uncolored which bears a strong resemblance to genuine yellow butter when

glanced at hastily by the untrained eye has greatly enhanced the difficulties in the way of convicting violaters of the act. The result is a feeling of bitterness on both sides to the controversy and it is the unhappy fortune of the Dairy and Food Commissioner to be in the centre of the storm. The figures accompanying this report will show that the dairymen and farmers as well as the consuming public have been properly looked after while more fines have been imposed and collected than in any previous year.

#### THE SALE OF VINEGAR.

It is a great pleasure to be able to report that the condition of affairs existing in other years with special reference to the vinegar imported into the state and sold by many grocers is greatly improved. The cheaper article misnamed vinegar which was formerly on sale in many sections of the state—notably in the larger cities—usually contained not a particle of cider, although it was generally sold as “genuine cider vinegar.” It was composed of dangerous acids and did considerable harm to the unconscious consumer. Many of the dealers sinned ignorantly. Like a goodly proportion of their patrons they were attracted by the price, which was somewhat lower than asked for the genuine article. The result was considerable activity in the effort to suppress this dangerous traffic. The vinegar act now upon the statute books of the state was enacted for the benefit of the farmers and fruit growers. It provides a simple and direct way whereby farmers may use the surplus apples from year to year. It gives them permission to utilize these apples by converting them into cider and then into vinegar. The one clause which provides a penalty for its violation is that which forbids the addition of water to the juice of the apple. During the year the situation has greatly improved so that almost all the vinegar now sold by the grocers is the real cider vinegar. It is to be hoped the improvement will continue.

#### GENERAL IMPROVEMENT IN CONDITIONS.

An examination of the statistical tables included in the report will show that the agents of the bureau have been industriously engaged during the year in collecting samples of various food products and that the chemists have carefully gone over these samples, analyzing and testing them and reporting results to this bureau. Altogether 8,530 different samples were collected and subjected to chemical analysis. The result, on the whole, has been quite satisfactory, indicating an upward movement all along the line. It will likewise be perceived that no less than 797 cases were terminated in the various courts of the Commonwealth in suits brought for violation of the various acts of assembly relating to food products and the adulteration thereof. Both in the matter of analysis and proceedings in the courts considerable progress has been made. Of



the large number of collections made extending over almost every article of food brought into the state for sale, a surprisingly small number was adulterated or misbranded, as compared with the condition of affairs in other years. The result of the year's work indicates that manufacturers, generally speaking, are anxious to comply with the requirements of the law and that grocers are equally anxious to serve their patrons with pure and wholesome foods. Toward such a condition of affairs this bureau has been steadily working during the years of its existence and it is a great pleasure to believe that the seed sown in other years and the patient work of the agents and officers of the bureau have produced such beneficent results. The protection of the public health has been greatly served by the enactment of recent laws.

#### POLICY CONCERNING PROSECUTIONS.

In the matter of prosecution the policy of the bureau has been to bring just enough under the provisions of the various acts of assembly to convince dealers and manufacturers that the state means business and that the laws must be respected and obeyed. With the exception of the oleomargarine act, no effort has been made to get within the toils every dealer who has carelessly or thoughtlessly violated the provisions of the pure food acts. Only those who persisted after ample warning have been proceeded against energetically. The manufacturers of bogus butter have not only violated the state law and deceived the people, but also trampled upon the federal laws. There is reason to believe that most of the others erred ignorantly and that they had no desire to offend. As it was 797 cases were terminated, something more than two a day, a record which shows that the bureau has not been idle. When one considers that the courts are usually congested with business and that the Dairy and Food division exists for more vital and enduring purposes than the mere prosecution of offenders, it will be perceived that considerable progress has been made in the direction of educating manufacturers and dealers into the conviction that while the state has no desire to hale anybody into the courts it will certainly do so if men persist in disregarding the mandates of the statutes which were enacted after careful consideration for the protection of the innocent public. Much useful work has been accomplished in other directions and the facts seem to show that it is now only the few who undertake to nullify the provisions of wise laws in order to satisfy their own selfish greed. The work of the year has not been sensational but it has been fruitful for good in the coming years.

#### OLEOMARGARINE VS. REAL BUTTER.

During the year there has been a very decided advance in the cost of the necessities of life. Nor does this tendency to higher cost of living show any tendency to give way to the moderation of former

times. Some who claim to have devoted much attention to the subject tell us that prices will never be as low as they have been; that the era of high prices has come to stay. However that may be it has produced considerable irritation among the people and led to some natural and inevitable results. The advance in meats, eggs and butter has been especially marked. The soaring prices of butter have tempted the manufacturers of butterine to make extra efforts to introduce their products more extensively than ever before. In many places this product is sold openly in the market for what it is. In others it is still called butter and large quantities have been sold in the state as heretofore noted. The increased sale of this substitute for genuine butter has led to considerable irritation among the dairy-men and some of them have felt that they do not have sufficient protection. Here and there it was intimated that this bureau was not doing its full duty in the matter of enforcement of the laws, although I think that the great majority of the manufacturers of butter were convinced that the exact contrary was true. For the purpose of showing the utter unfairness of the adverse criticism the following comparative table of results was prepared and made public. This was not done from any desire to magnify the work done by the division under its present management, but simply in the interest of truth and justice and with the desire to acquaint the public with the real facts. The figures are as follows:

#### COMPARATIVE STATEMENT.

Oleomargarine cases terminated and amount of fines and costs collected under the Act of May 29th, 1901, to and including December 31st, 1909.

Commissioner.	Year.	Cases terminated.	Fines and costs paid to State Treasurer.
Welles & Cope, -----	1901	16	\$1,160.00
Welles & Cope, -----	1902	117	4,113.59
Total, Welles & Cope, -----		133	\$5,273.59
B. H. Warren, -----	1903	35	\$2,468.55
B. H. Warren, -----	1904	48	1,115.10
B. H. Warren, -----	1905	101	8,360.41
B. H. Warren, -----	1906	118	11,743.44
Total, B. H. Warren, -----		302	\$23,687.50
James Foust, -----	1907	157	\$14,827.88
James Foust, -----	1908	67	7,139.05
James Foust, -----	1909	273	23,399.35
Total, James Foust, -----		497	\$45,366.28

Note that during the three years of Commissioner Foust's administration 497 cases have been terminated as compared with 435 cases terminated during the six years of his predecessors; and that \$45,366.28 in fines and costs has been paid into the State Treasury as compared with \$28,961.09 paid in during the six years of his predecessors.



## THE CAUSE OF THE DAIRYMEN.

In this connection it is but fair to say that in every controversy between oleomargarine or any of its variously named products, and genuine butter it has been the policy of this division to stand with the butter-makers. The federal law recognizes the manufacture of oleomargarine as a lawful occupation and the statutes of this state allow the sale of uncolored oleomargarine under certain plainly defined regulations. Whenever the requirements of the state law have been complied with the legitimacy of the business has been recognized and licenses have been duly issued to dealers in accordance with the provisions of the act. The Dairy and Food Bureau has constantly fought against the introduction and sale of colored oleomargarine, whether under its own name or under the name of yellow butter, and the records of the bureau show that it has been continuously active. This has been the line of action not only because it is required by the act of assembly but also because this Division recognizes the value of the dairy industry to the State and the country and is likewise firmly convinced that a majority of the people prefer to use butter and will use it so long as its price does not bar it from their tables. The dairymen of the State are among the most useful of its citizens. They are engaged in an occupation which adds to the wealth of the Commonwealth and which produces an article of diet at once healthful and delicious, not by any means a luxury, but a real necessity. In the prosecution of their work they are entitled to protection against unfair competition and it has been my policy to act energetically and effectively against those who have been trying to injure their trade by the introduction of an inferior substitute.

## RESULT OF OLEOMARGARINE PROSECUTIONS.

The figures presented in succeeding pages of this report show that in the prosecution of violaters of the oleomargarine act 273 cases were terminated and \$23,399.35 in fines and costs turned into the State Treasury. These figures represent more than twice the sum collected on account of this work in any previous year of the Bureau's existence. A slight survey of the tabular exhibit of the work accomplished and the amounts realized shows that there has been no slackness here. The successful prosecution of violaters of law and the numerous victories won by the Bureau must be largely ascribed to the able and courageous efforts of A. H. Woodward, Esq., who represented the legal side of the war against oleomargarine venders and who proved himself an expert in this class of litigation. The determination with which these violations of the law have been prosecuted and the heavy fines and jail sentences imposed upon some of the chronic violaters of the act ought to have a deterring influence

upon those who have hitherto considered it worth their while to set the laws at defiance for the purpose of adding to their gains. The suggestion has been made that the law should be so amended as to forbid the issuance of a license to one who repeatedly offends in this particular. It seems to be a good idea; certainly he who persists in using the privileges granted by the State to injure the public and do violence to law should be given no consideration by the State.

#### IMPROVEMENT ALL ALONG THE LINE.

One hundred and seventeen samples of delicacies, including catsup, olive oil, etc., were purchased and subjected to analysis during the year. All of these goods were found to comply with the law in every essential respect except a number of brands of catsup. These were found to contain an excessive amount of benzoate of soda. Prosecutions were duly instituted and a number of cases terminated. These are reported among the cases terminated under the pure food acts of 1907 and 1909. The improvement of the quality of the goods included under this head is extremely gratifying. So far as excess in the quantity of benzoate of soda is concerned this is likely to happen so long as the federal government practice is at variance with that of the Commonwealth. As is generally known, the experts appointed by former President Roosevelt during his term of office to examine and report upon the effect of benzoate of soda upon the human system, came to the conclusion that it was not injurious, even in large quantities. Accordingly, the federal food authorities soon after issued an order permitting the use of this preservative, without regard to the quantity used in any food product. It was quite certain that many manufacturers would avail themselves of the privilege accorded them and that some would be a bit careless in regard to the quantity put in the goods intended for use in states like Pennsylvania where the amount used is limited by law. I am not prepared to advocate the modification of our State law in this respect. There is reason to believe that public sentiment here is very decidedly against the use of such preservatives and would prefer to see the national government advance rather than have the State lower its standards. This seems a reasonable view.

#### SHOWING OF DAIRY PRODUCTS.

Dairy products made an excellent showing for purity during the year. It is extremely gratifying to be able to report the almost entire exclusion from the markets of this State of impure or adulterated articles in this Division of food products. No less than 5,661 samples were purchased and submitted to the chemists for examination and analysis during the year. This included butter, cream, cheese and milk and of this quantity only 132 samples were found to be adulterated within the meaning of the act of assembly. These

were prosecuted under the law and the cases terminated. Most of these improper samples consisted of milk containing added water. The added substance is in itself harmless, but when water is added to milk it weakens the strength of the product and in that sense becomes an evil and a menace to little children who need pure milk of a guaranteed strength in order that they may be properly nourished. Nor is it any less important for the sake of the sick, the aged or the infirm that the act of assembly forbidding the sale of milk which has been weakened by the addition of water should be rigidly enforced. So far as the Division has been able to detect violations of the act, the guilty parties have been promptly brought before the bar of justice and properly punished. In a few cases the butter-fat has been removed, thus impairing the value of the milk. Several of the samples of cream contained less than 15 per cent. of butter fat, the minimum permitted by law. Taken as a whole, the result of the examination of these samples shows a condition of affairs calling for hearty congratulation.

#### EXCELLENT CONDITION OF CANNED GOODS.

With the exception of French peas which contain salts of copper, and mushrooms which were bleached with sulphurous acid, there were no prosecutions for the vending of canned goods in this State. Many samples were procured from various sections of the State and all were carefully examined by competent chemists. The result was a practically clean bill of health for the canners, much to the gratification of the Dairy and Food Division. The canned goods purchased and analyzed consisted of corn, tomatoes, beans, peas, fish, potted meats of all kinds, together with a great variety of soups. It is with much satisfaction I bear testimony to the sincere desire of the canners to co-operate heartily and sincerely with the pure food authorities of this State and the country at large. The result of the examination of the samples collected by the agents of the Division will undoubtedly be as gratifying to the great body of the consuming public as it is to the pure food people and will be to the canners. At one time considerable prejudice had been aroused in the public mind against canned goods. This was the result of bad work on the part of unscrupulous persons who were anxious only to secure quick monetary returns, regardless of the quality of their goods or the effect upon the public health or the public's disposition towards canned goods. I am convinced that all this has been remedied. Personally I desire to thank the canners for their quick obedience to the law of the State and I think I am not going beyond bounds when I recommend their goods to the confidence of the consuming public. They have surely done all that is required of them, and that cheerfully and effectively.



## AN IMPORTANT TEST CASE.

The new pure food act, approved May 13th, 1909, prohibits specifically and by name the use of a large number of adulterants. Among the articles thus forbidden is alum. This has been largely employed in the manufacture of baking powders of various brands. According to the plain language of the act the sale of baking powder wherein alum is an ingredient is unlawful. In order to test the matter, and with the desire to avoid the bringing of wholesale prosecutions, it was determined to test the constitutionality of the act by a prosecution. Accordingly a prosecution was brought in the Quarter Sessions of Dauphin county against Myer Gross, a retail grocer doing business in the city of Harrisburg. The specific charge was "selling baking powder containing alum, in violation of the provisions of act No. 292, approved May 13, 1909." The interests of the Commonwealth, as represented by the Dairy and Food Bureau, were carefully and effectively looked after by A. H. Woodward, Esq., of Clearfield; Hon. Lyman D. Gilbert, of Harrisburg, and Hon. E. E. Beidelman, also of Harrisburg. For the defense appeared Hon. Frederick W. Fleitz, of Scranton; Charles H. Berger, Esq., of Harrisburg, and H. Randolph Barton, Jr., Esq., of Baltimore. The defense contended that the act prohibiting the use of alum was unconstitutional and that the particular product used in the baking powder was not alum. Judge Smith, of Clearfield county, specially presiding, promptly overruled both objections and instructed the jury that the act was constitutional and the brand of baking powder under discussion did contain alum, according to the showing of the defense. The jury accordingly returned a verdict of guilty in manner and form as indicted. The case is to be removed to the higher courts for final decision. In view of the importance of this case and that a proper presentation of the entire matter from the standpoint of the Dairy and Food Division may be preserved for future reference and information, the very interesting brief prepared by the Hon. Lyman D. Gilbert, of counsel for the State, is presented in the form of an appendix to this report. It will be of great value to all seeking information concerning the scope and intent of the act. The paper in which Mr. Barton, of counsel for the defense, presented to the court the reasons advanced in support of the motion to quash the indictment is also given, as well as a copy of the law.

## VALUE OF TRADE JOURNALS.

The Bureau has derived much information and profit from a perusal of the various state and city bulletins which it has received from time to time during the year. The increase in these bulletins is a token of the increasing favor with which the people of this country are receiving the pure food propaganda. Great profit has also been derived from a study of the trade journals that have visited

the Division. These publications are generally favorable to the pure food cause. It might be improper to single out any for special mention. If it were not so I would gladly take the opportunity to specifically express the high esteem with which certain of these journals are regarded, the assistance they render us in our work and the very great service they have been doing in helping to educate the manufacturers and venders, not to mention the rank and file, to a better conception of the importance of preventing adulteration of the necessities of life. Many of the leading newspapers of the country have also devoted much space to food discussion and I am under heavy obligations to the State press for the uniformly kind and courteous treatment accorded this Bureau, its officers and agents. Thanks to the attitude of the newspapers of Pennsylvania, this State occupies an advanced position in the matter of pure food and the markets are almost entirely empty of adulterated goods.

#### THE MONTHLY BULLETIN.

The Monthly Bulletin of the Bureau, authorized by law, has appeared regularly during the year. In addition to the usual official statistical reports of the number and localities of oleomargarine licenses and the list of cases terminated in the courts, it contains several pages each month devoted to educational work. The specific purpose of the editorial contributions has been to encourage manufacturers to obey the laws, national and state, to aid grocers in any possible way both in the matter of pleasing patrons and enlarging their numbers and in that of providing nothing but wholesome food products for their customers, and to educate housekeepers to watch the labels. In the nature of things there must be more or less sameness about work of this sort, but an effort has been made to deal from month to month with matters of contemporaneous interest. How well this has been accomplished must be left to others to determine. It is something to the Bulletin's credit however, that during the year many letters have been received from this and other states, commending its tone and complimenting it upon the useful work it is doing. The letters received from various sources show that the Bulletin has a mission and that the seed it sows does not all fall on barren ground.

#### RECEIPTS OF THE BUREAU.

All moneys received from oleomargarine licenses, fines or other sources are immediately covered into the State Treasury. No portion of these moneys is used for the maintenance of the Bureau but the whole is paid over at once to the proper officer. As will be seen by the table of receipts and expenditures, there was received during the year from oleomargarine licenses and from fines the handsome sum of \$86,594.15. From the appropriation made by the legislature

of 1909 for the maintenance of the Bureau the sum of \$83,700.68 was expended. Thus it will be seen that the Dairy and Food Division of the State Agricultural Department, for the first time in its history, was more than self-sustaining. This is not expected to happen frequently; the fact that it occurred this year is attributed entirely to the trade in oleomargarine, regular and illicit, the fees paid for licenses having summed up \$45,235.68, while the fines for violating the law regulating the sale of oleomargarine aggregated \$23,399.35.

#### CONCLUSION.

I desire to acknowledge the repeated obligations of this Division to his excellency, Edwin S. Stuart, governor of this Commonwealth, for the steady and helpful interest which he has constantly manifested in the question of pure food for the people. He has uniformly sustained every action looking toward the protection of the consumer, whether in the enactment of new and more efficient laws or in the enforcement of those already upon the statute books.

I renew my expression of repeated indebtedness to Hon. N. B. Critchfield, Secretary of Agriculture, for the assistance rendered by him during the year. The work of this Bureau, never more intricate than now, has always received his timely aid.

All my assistants in the operation of this Division have been faithful and industrious during the year. The agents have conducted themselves in a courteous and considerate manner toward the dealer in food stuffs as well as toward the consuming public in whose interest they have labored. That their labors have not been without good results is attested by the summing up of the work of the year which shows the food market of this Commonwealth supplied with pure and wholesome goods. The chemists who have analyzed the various samples purchased by the agents, as well as the attorneys who have represented the Bureau in the various prosecutions instituted or terminated, have done very careful and efficient work and deserve the hearty thanks of the rank and file in whose interests they have labored. Too much credit cannot be given the office force for their faithful work.

The work of the year 1909 has been completed. We look back upon its record, if not with complete satisfaction, at least with the conviction that another step has been taken in the direction of conserving the welfare and promoting the health of the people. We look forward to the future with high confidence, believing that the good already done will be efficiently supplemented by that remaining to be done during the coming months.

Respectfully submitted,

JAMES FOUST,

*Dairy and Food Commissioner.*

Harrisburg, Penn'a, December 31, 1909.

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# APPENDIX.

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## SUMMARY.

The following gives a list of articles analyzed by Chemists of this Bureau during the year 1909.

Article.	Number Analyzed.
DAIRY PRODUCTS:	
Butter, -----	974
Cheese, -----	8
Cream, -----	1,078
Milk, -----	2,866
Milk, skimmed, -----	124
Milk, butter, -----	8
Milk, condensed, -----	1
Milk, evaporated, -----	2
	5,061
=====	
OLEOMARGARINE, -----	426
=====	
RENOVATED BUTTER, -----	18
=====	
EGGS:	
In the shell, -----	57
Out of the shell, -----	17
	74
=====	
BREAD, CAKES, PUDDING, GELATINE, ETC.:	
Bread (loaf), -----	11
Cake, Coffee, -----	2
Cake, Cup, -----	1
Cake, Drop, -----	3
Cake, Dutch, -----	2
Cake, Fancy, -----	1
Cake, Jelly, -----	1
Cake, Mixed, -----	6
Cake, Pound, -----	6
Cake, small and assorted, -----	3
Cake, Sponge, -----	6
Cake, no name given, -----	1
Rolls, -----	3
Tea buns, -----	4
Gelatine, -----	3
Jello, -----	1
Jellycon, -----	1
Puddine, fruit flavored, -----	1
Pudding, Cream, -----	1
Pudding, Cream Fruit, -----	1
Tapioca, -----	4
	67
=====	
BAKING POWDER, CORN STARCH AND FLOUR:	
Baking powder, -----	31
Cornstarch, -----	33
Flour, -----	82
Flour, Gluten, -----	1
	147
=====	



## SUMMARY—Continued.

Article.	Number Analyzed.
CANNED FRUITS AND VEGETABLES:	
Apricots, -----	2
Beans, string, -----	9
Beans, baked, -----	7
Cherries, -----	7
Cherries, Maraschino, -----	15
Corn, -----	32
Gherkins, sweet and sour, -----	27
Mince meat, -----	11
Mixed vegetables, -----	1
Mushrooms, -----	11
Olives, -----	3
Peaches, -----	7
Peas, -----	36
Pickled onions, -----	16
Pickles, cucumber, -----	76
Pickles, mixed, -----	12
Pickles, spiced, -----	6
Pickles, sour, -----	12
Pickles, sweet, -----	16
Pineapple, -----	3
Plums, -----	1
Rhubarb, -----	1
Sauerkraut, -----	1
Tomatoes, -----	15
Tomato pulp, -----	2
	329
	=====
CATSUPS, SALAD DRESSINGS, SAUCES, ETC.:	
Catsup, tomato, -----	68
Catsup (no name), -----	13
Chow Chow, -----	4
Sauce, Challenge, -----	1
Sauce, Chili, -----	3
Sauce, Longfields, -----	2
Sauce, Worcestershire, -----	7
Sauce, oyster and clam, -----	1
Relish, -----	4
Salad cream, -----	2
Salad dressing, -----	4
Salad dressing and meat sauce, -----	1
Olive oil, -----	7
	117
	=====
FRUIT BUTTERS, JAMS, JELLIES AND PRESERVES:	
Butter, Apple, -----	3
Butter, Peanut, -----	6
Jam, Blackberry, -----	1
Jam, Cherry, -----	1
Jam, Currant, -----	1
Jam, Grape, -----	1
Jam, Peach, -----	2
Jam, Plum, -----	2
Jam, Raspberry, -----	2
Jam, Strawberry, -----	1
Jam, Strawberry and Apple, -----	1
Jelly, Apple, -----	7
Jelly, Apple and Blackberry, -----	1
Jelly, Crabapple, -----	1
Jelly, Elderberry and Apple, -----	1
Jelly, Grape and Apple, -----	1
Jelly, Raspberry and Apple, -----	1
Jelly, Pineapple, -----	1
Jelly, Plum, -----	1
Jelly (no name given), -----	2
Preserves, Apple, -----	1
Preserves, Blackberry, -----	1
Preserves, Pear, -----	1

## SUMMARY—Continued.

Article.	Number Analyzed.
Preserves, Plum, -----	3
Preserves, Raspberry, -----	1
Preserves, Strawberry, -----	4
Orange Marmalade, -----	1
	49
	=====
FLAVORING EXTRACTS:	
Extract, Lemon, -----	1
Extract, Root Beer, -----	1
Extract, Vanilla, -----	5
	7
	=====
FRUIT SYRUPS:	
Syrup, Cherry, -----	4
Syrup, Orange, -----	3
Syrup, Orangeade, -----	2
Syrup, Pineapple, -----	4
Syrup, Raspberry, -----	4
Syrup, Strawberry, -----	6
	23
	=====
ICE CREAMS:	
Ice Cream, Biscuit, -----	1
Ice Cream, Maple, -----	1
Ice Cream, Chocolate, -----	23
Ice Cream, Peach, -----	2
Ice Cream, Strawberry, -----	31
Ice Cream, Vanilla, -----	125
Ice Cream (no flavor given), -----	43
Milk Balls, -----	1
	227
	=====
LARD, -----	383
	=====
MEAT EXTRACTS AND SOUPS:	
Extract of Beef, -----	5
Clam Chowder, -----	2
Chicken Soup, -----	2
Tomato Soup, -----	4
Vegetable Soup, -----	2
	15
	=====
MEATS AND FISH—CANNED AND FRESH:	
Bacon, Canned, -----	5
Bacon, Fresh, -----	1
Beef, Corned, -----	5
Beef, Dried, -----	6
Beef Hash, Canned, -----	1
Beef, Potted, -----	2
Beef, Sliced, -----	4
Beef, Smoked, -----	3
Bologna, -----	42
Chicken, -----	1
Chicken Croquettes, -----	1
Chicken Loaf, -----	1
Chicken, Potted, -----	1
Codfish, -----	1
Codfish, Shredded, -----	1

## SUMMARY—Continued.

Article.	Number Analyzed.
MEATS AND FISH—CANNED AND FRESH—Continued.	
Corned Cod, -----	2
Deviled crabs, -----	1
Fish, Fresh White, -----	3
Frankfurts, -----	13
Ham, Fresh, -----	1
Ham, Boiled, -----	1
Ham, Minced, -----	4
Ham, Potted, -----	2
Hamburg Steak, Fresh, -----	37
Herring, -----	2
Herring Roe, -----	2
Liver Pudding, Fresh, -----	1
Lobster, Canned, -----	2
Mackerel, -----	1
Meats Potted, Ham Flavor, -----	3
Oysters, Canned, -----	11
Oysters, Fresh, -----	3
Pork Chops, -----	1
Pork and Beans, -----	6
Pork, Fresh, -----	2
Pudding Meat, -----	2
Salmon, Canned, -----	13
Salmon, Fresh, -----	1
Sardines, Canned, -----	16
Sausage, Fresh, -----	33
Sausage, Fresh Pork, -----	96
Sausage, Meat, -----	8
Sausage, Minced, -----	2
Sausage, Polish, -----	7
Sausage, Sliced, -----	2
Sausage, Summer, -----	1
Sausage, Vienna, -----	5
Sausage, Wiener, -----	36
Shrimps, -----	6
Tongue, -----	2
Tongue, Potted, -----	1
Veal, Fresh, -----	1
Veal Loaf, -----	1
	406
=====	
NON-ALCOHOLIC DRINKS:	
Beerine, -----	1
Bevo, -----	1
Birch Beer, -----	54
Blood Orange, -----	1
Bo-Lo, -----	2
Champagne des Pommes, -----	1
Cider, Apple, -----	1
Cider, Champagne, -----	3
Cider, Orange, -----	2
Cider, Pear, -----	1
Cider, Sweet, -----	3
Cherrysip, -----	2
Coco Cola, -----	21
Cream Nectar, -----	2
Cream Brew, -----	2
Durber, -----	1
Excello Grap-ene, -----	1
Ginger Ale, -----	81
Ginger Beer, -----	1
Ginger Lithia, -----	2
Ginger Sparkler, -----	1
Grapo-Cola, -----	1
Grape Juice, -----	103
Grapemist, -----	4
Hop Ale, -----	1
Iron Ale, -----	1
Iron Beer, -----	1
Iron Brew, -----	12
Jersey Creme, -----	4
Lemon Sour, -----	10
Lime Juice, -----	1

## SUMMARY—Continued.

Article.	Number Analyzed.
NON-ALCOHOLIC DRINKS—Continued.	
Little Dandy, -----	1
Liquid Force, -----	23
Malt, Crescent, -----	1
Malt Extract, -----	4
Malt Tonic, -----	1
Malto-Hopo Health Beverage, -----	1
Moxie, -----	65
Nectar, -----	2
Nu-Bru, -----	5
Orangeade, -----	8
Orcharade, -----	3
Peachnip, -----	1
Peachmellow, -----	2
Phosphate, Cherry, -----	4
Phospho-Brew, -----	2
Ping Pong, -----	1
Ple Zee, -----	1
Pop (no brand given), -----	30
Pop, Birch, -----	1
Pop, Black, -----	1
Pop, Boch, -----	1
Pop, Brown, -----	20
Pop, Cherry, -----	1
Pop, Chocolate, -----	2
Pop, Cream Soda, -----	2
Pop, Dark, -----	10
Pop, Ginger, -----	1
Pop, Green, -----	1
Pop, Lemon, -----	14
Pop, Nectar, -----	1
Pop, Orange, -----	9
Pop, Peach, -----	2
Pop, Pink, -----	1
Pop, Quince, -----	1
Pop, Raspberry, -----	7
Pop, Red, -----	27
Pop, Strawberry, -----	36
Pop, Vanilla, -----	1
Pop, White, -----	43
Pop, Wintergreen, -----	1
Pop, Yellow, -----	1
Proxy, -----	1
Raspberry Creme, -----	1
Raspberry Sparkler, -----	3
Rasport, -----	1
Real Chocolat, -----	3
Root Beer, -----	33
Sarsaparilla, -----	40
Sarsaparilla, Imitation, -----	1
Sarsaparilla, Sparkler, -----	1
Soda, Birch, -----	1
Soda, Caramel Cream, -----	1
Soda, Cherry, -----	4
Soda, Chocolate, -----	4
Soda, Cream, -----	25
Soda, Ginger, -----	2
Soda, Lemon, -----	22
Soda, Orange, -----	12
Soda, Peach, -----	1
Soda, Raspberry, -----	6
Soda, Strawberry, -----	25
Soda, Swiss Cream, -----	1
Soda, Vanilla, -----	6
Soda Water (no flavor given), -----	36
Soft drinks (no name given), -----	49
Strawberry Juice, -----	1
Temperance Beer, -----	1
Terro-Phosphate, -----	1
Tonica, -----	3
To-Ko, -----	2
<b>Water, Aerated, -----</b>	<b>2</b>
Water, Apollinaris, -----	1
Water, Birch Mineral, -----	1
Water, Distilled, -----	1

## SUMMARY—Continued.

Article.	Number Analyzed.
NON-ALCOHOLIC DRINKS—Continued.	
Water, Mineral, -----	1
Water, Red Raven Aperient, -----	2
Water, White Rock Lithia, -----	3
Weiss Beer, -----	1
Wild Cherry, -----	2
Wild Cherry Pepsin, -----	10
Wina-Vina, -----	1
	973
SPICES, ETC.:	
Allspice, -----	2
Cinnamon, -----	2
Cloves, -----	1
Ginger, -----	2
Mustard, Prepared, -----	6
Pepper, Black, -----	5
	18
VINEGARS:	
Vinegar, Apple, -----	2
Vinegar, Cider, -----	136
Vinegar, Distilled, -----	2
Syrup, -----	1
	141
MISCELLANEOUS PRODUCTS:	
Candy, -----	4
Chewing Gum, -----	1
Chocolate, -----	1
Chocolate Syrup, -----	2
Cocoa, -----	6
Cocoanut, Shredded, -----	4
Cornflakes, -----	1
Honey (in comb), -----	8
Honey (extracted), -----	2
Jello Ice Cream Powder, -----	2
Mapleine, -----	1
Maple Syrup, -----	1
Noodles, -----	8
Oats, Crushed, -----	1
Oats, Rolled, -----	2
Sugar, -----	2
Taffy, -----	2
Cantaloupe (decomposed), -----	1
	49
RECAPITULATION.	
Butter, -----	974
Cheese, -----	8
Cream, -----	1,078
Milk, -----	3,001
Oleomargarine, -----	426
Renovated butter, -----	18
Eggs, -----	74
Fruit syrups, -----	23
Ice cream, -----	227
Lard, -----	383
Non-alcoholic drinks, -----	973
Vinegar, -----	141
Food, -----	1,204
Total, -----	8,530

## CASES TERMINATED.

NUMBER OF CASES TERMINATED, AND THE ACT UNDER  
WHICH PROCEEDINGS WERE INSTITUTED DURING  
THE YEAR, 1909.

Oleomargarine act, .....	273
Renovated butter act, .....	6
Meat act, .....	2
Food act, 1907, .....	19
Food act, 1909, .....	110
Milk act, 1901, .....	14
Milk act, 1909, .....	112
Lard act, .....	29
Vinegar act, .....	45
Non-alcoholic drink act, .....	148
Ice cream act, .....	39
	797

## FINANCIAL STATEMENT.

RECEIPTS AND DISBURSEMENTS OF THE DAIRY AND  
FOOD BUREAU FOR THE YEAR 1909.

### RECEIPTS.

Oleomargarine licenses, .....	\$45,235 68
Oleomargarine fines, .....	23,399 35
Pure food fines, act of 1909, .....	6,014 38
Non-alcoholic drink fines, .....	3,127 75
Vinegar fines, .....	2,197 92
Milk fines, act of 1909, .....	1,905 74
Lard fines, .....	1,100 00
Pure food fines, act of 1907, .....	1,094 00
Ice cream fines, .....	826 00



Renovated butter licenses, .....	708 33
Milk fines, act of 1901, .....	497 00
Renovated butter fines, .....	391 00
Meat fines, .....	97 00
	<hr/>
	\$86,594 15

## DISBURSEMENTS.

Attorneys, detectives and assistants, .....	\$25,025 96
Chemists and laboratory expenses, .....	20,005 26
Special agents' salaries, .....	17,724 00
Traveling and agents' expenses, .....	15,056 71
Clerical and Stenographers, .....	5,888 75
	<hr/>
	\$83,700 68

All the receipts of the Bureau are paid into the State Treasury for the use of the Commonwealth and the Bureau is maintained by an appropriation made by the Legislature.

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THE NEW PENNSYLVANIA FOOD LAW, APPROVED MAY 13TH, 1909, TOGETHER WITH CONSTITUTIONAL QUESTIONS RAISED BY RANDOLPH BARTON, JR., ESQ., REPRESENTING THE DEFENSE, AND HON. LYMAN D. GILBERT'S ANSWER THERETO ON THE PART OF THE COMMONWEALTH, IN THE CASE COM. vs. MEYER GROSS.

No. 292.

## AN ACT

Relating to food; defining food; providing for the protection of the public health, and the prevention of fraud and deception, by prohibiting the manufacture or sale, the offering for sale or exposing for sale, or the having in possession with intent to sell, of adulterated, misbranded, or deleterious foods; prescribing certain duties of the Dairy and Food Commissioner in reference thereto; and providing penalties for the violation thereof.

Section 1. Be it enacted, &c., That it shall be unlawful for any person, firm, copartnership, limited partnership, joint-stock company, or corporate body, by himself, herself, itself, or themselves, or by his, her, its, or their agents, servants, or employes, to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, any article of food which is adulterated or misbranded within the meaning of this act.

Section 2. That the term "Food," as used in this act, shall include not only every article used for food by man, but also every article used for, or entering into the composition of, or intended for use as an ingredient in the preparation of, food for man.

That the term "Person," as used in this act, shall include individuals, firms, copartnerships, limited partnerships, joint-stock companies, and bodies corporate, as well as all officers, agents, servants, employes, or others acting for any of the same, and shall be taken as applying in the singular or plural as the case may require.

Section 3. That for the purpose of this act, an article of food shall be deemed to be adulterated,—

First. If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality, strength, or purity.

Second. If any substance has been substituted, wholly or in part, for the article.

Third. If any valuable constituent of the article has been, wholly or in part, abstracted.

Fourth. If it be mixed, colored or changed in color, coated, polished, powdered, stained, or bleached, whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or, if by any means, it is made to appear better or of greater value than it is.

Fifth. If it contains any added sulphurous acid, sulphur dioxide, or sulphites, benzoate acid or benzoates, except as hereafter provided; or if it contains any added boric acid or borates, salicylic acid or salicylates, formaldehyde, hydrofluoric acid or fluorides, fluoborates, fluosilicates, or other fluorine compounds, dulcin, glucin, saccharin, alum, compounds of copper, betanaphthol, hydronaphthol, abrastol, asaprol, oxides of nitrogen, nitrous acid or nitrates, pyroligneous acid, or other added ingredients deleterious to health; or if, in the case of confectionery, it contains any of the substances mentioned in this paragraph, or any mineral substance, or injurious color or flavor, alcoholic liquor, or any other ingredient, not herein mentioned, deleterious to health: Providing, That this act shall not be construed to prohibit the use of harmless colors of any kind, in confectionery, when used for coloring, and not for any fraudulent purpose: And provided further, That nothing in this act shall be construed to prohibit the use of common salt, sugar, pure corn syrup, pure glucose, wine vinegar, cider vinegar, malt vinegar, sugar vinegar, glucose vinegar, distilled vinegar, spices or their essential oils, alcohol (except in confectionery), edible oils, edible fats, wood smoke applied directly as generated, or proper refrigeration: And provided further, That in the manufacture of confectionery the use of alcohol shall be permitted as it may be found in customary alcoholic tinctures or extracts used for flavoring purposes only, and as a solvent for glazes, and that oil of sweet birch, or methyl-salicylic ester, may be used as a substitute for oil of wintergreen as a flavor: And provided further, That in the preparation of dried fruits and molasses, sulphur dioxide, either free or in simple combination, may be used in such quantities as will not render said dried fruits or molasses deleterious to health; and that sodium benzoate may be used in the preparation of those articles of food in which it has heretofore been generally used, in quantities not exceeding one-tenth (1-10) of one per centum, or benzoic acid equivalent thereto: And provided further, That when any quantity of sodium benzoate is used in any article of food, or any quantity of sulphur dioxide is used in the preparation of dried fruits or molasses, the fact that sodium benzoates or sulphur dioxide has been used in the preparation thereof shall be plainly stated on each package of such food.



Sixth. If it consists of, or is manufactured in whole or in part from, a diseased, contaminated, filthy, or decomposed substance, either animal or vegetable; or an animal or vegetable substance produced, stored, transported, or kept in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter.

Section 4. That for the purpose of this act, an article shall be deemed to be misbranded,—

First. If it be an imitation of, or offered for sale under, the name of another article.

Second. If it be labeled or branded so that it may deceive or mislead the purchaser; or purport to be a foreign product, when not so; or if the contents of the package as originally put up shall have been removed, in whole or in part, and other inferior contents shall have been placed in such package.

Third. If the package containing it, or its label, shall bear any statement, design, or device, regarding the substances or ingredients contained therein, which statement, design, or device shall be false or misleading in any particular.

Fourth. If it be a mixture or compound which may be known, or from time to time hereafter known, as an article of food, unless it be accompanied on the label or brand with a statement that it is a mixture or compound and a statement of the substance entering into said mixture or compound. All labeling of packages required by this act shall be on the main label of each package, and in type not less than eight-point, brier caps, in size,—unless the size of the package will not permit the use of eight-point cap type, in which case the size of the type may be reduced proportionately,—and in such position and terms as may be plainly seen and read by the purchaser: Provided, That nothing in this act shall be construed as requiring or compelling the proprietors, manufacturers, or sellers of proprietary foods to disclose their trade formulas, except in so far as may be necessary under the provisions of this act to avoid adulteration, imitation, or misbranding.

Section 5. When the Dairy and Food Commissioner, or his agent, shall obtain an article of food, or a sample or portion thereof, from any person, for the purpose of determining whether the same is adulterated or misbranded within the meaning of this act, and it shall be found that the said article of food is adulterated or misbranded within the meaning of this act, then the Dairy and Food Commissioner shall proceed against the said person, from whose store, warehouse, or other place of business said article, sample, or portion thereof, shall have been obtained, for a violation of the provisions of this act.

But no prosecution shall be sustained, under the provisions of this act, against a retail dealer for the selling, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded article of food, as defined herein, if the retail dealer from whom the said article of food, sample, or portion thereof, was obtained by the Dairy and Food Commissioner or his agent, can establish a guaranty, signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect

that the same is not adulterated or misbranded within the meaning of this act designating it.

Said guaranty to afford protection shall contain the name and address of the manufacturer or wholesale dealer, or jobber or distributor, making the sale of such article of food to such retailer, and in such case the said manufacturer or wholesale dealer, or jobber or distributor, so as aforesaid giving such guaranty, shall be amenable to the prosecution, fines and other penalties which would attach, in due course, to the retailer holding such guaranty under the provisions of this act, for a violation hereof; and every manufacturer or wholesale dealer, or jobber or distributor, giving a guaranty under the provisions of this act shall be held responsible, and shall be proceeded against for the adulteration or misbranding of any article of food sold under said guaranty, and shall be subject to the penalties for the violation of the provisions of this act. No such guaranty shall operate as defense to prosecution for violation of the provisions of this act, if the retailer holding such guaranty shall continue to sell the same article of food after written or printed notice from the Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this act

But if said person shall violate the provisions of paragraph six, section three of this act, by having stored or transported or kept said article, in said paragraph mentioned, in a way or manner to render it diseased, contaminated, or unwholesome, said person shall be proceeded against for a violation of the provisions of this act; and it shall not be necessary for conviction that any article, sample, or portion thereof, shall be obtained by the Dairy and Food Commissioner, or his agent, as a condition precedent to prosecution.

Section 6. For the purpose of this act, an article shall be deemed to be the same article,—

First. When it shall be of the same brand, or have thereon the same label, and shall be adulterated or misbranded in the same way.

Second. When it is not labeled or branded, but is sold, offered for sale, or exposed for sale under the same name, and adulterated or misbranded in the same way.

Third. When, although sold, offered for sale, or exposed for sale under another name, or labeled or branded in a different way, it shall be found to be the product of the same manufacturer, grower, or maker, and to be adulterated or misbranded in the same way: Provided, however, That an article shall be deemed to be adulterated in the same way if it shall contain the same adulterant substance or substances.

Section 7. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than sixty dollars nor more than one hundred dollars.

Section 8. The Dairy and Food Commissioner of the State shall be charged with the enforcement of the provisions of this act and shall make rules and regulations for the proper enforcement thereof, and shall cause such rules and regulations to be published in the official bulletin in the issue immediately following the preparation of the same.

Section 9. All fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid to the Dairy and Food Commissioner or his agent, and by the Dairy and

Food Commissioner be paid into the State Treasury, for the use of the Commonwealth.

Section 10. The following acts of Assembly; namely,—An act, entitled “An act to provide against the adulteration of food, and providing for the enforcement thereof,” approved the twenty-sixth day of June, Anno Domini one thousand eight hundred and ninety-five;

And an act, entitled “An act for the protection of public health, by prohibiting the manufacture and sale, offering for sale, or having in possession with intent to sell, within the State, of adulterated, misbranded, poisonous, or deleterious foods and confections; regulating the enforcement of the provisions hereof; providing for the protection of persons buying and selling adulterated or misbranded foods and confections under a guaranty; and providing penalties for the violation thereof,” approved the first day of June, Anno Domini one thousand nine hundred and seven,—be and the same are hereby repealed.

Provided, nevertheless, That this act shall not apply to, nor in any way affect,—

An act entitled “An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,” approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

And the amendment thereto, approved the nineteenth day of April, Anno Domini one thousand nine hundred and one, entitled “An act to amend the first section of an act, entitled ‘An act to prohibit the adulteration or coloring of milk and cream by the addition of so-called preservatives or coloring matter, and to provide for the enforcement of the same,’ approved the tenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

Nor the act, entitled “An act to prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining-rooms and boarding-houses, for the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to prescribe penalties and punishment for violations of this act, and the means and the method of procedure for its enforcement, and regulate certain matters of evidence in such procedure,” approved the twenty-ninth day of May, Anno Domini one thousand nine hundred and one;

Nor the act, entitled, “An act defining boiled or process butter; designating the name by which it shall be known; providing for the licensing of manufacturers and dealers therein, and regulating the sale and labeling of the same so as to prevent fraud and deception in its sale; providing punishment for violations of this act, the methods of procedure for its enforcement, and certain matters of evidence in such procedure,” approved the tenth day of July, Anno Domini one thousand nine hundred and one;



Nor the act, entitled "An act to prohibit the selling, shipping, consigning, offering for sale, exposing for sale, or having in possession with intent to sell, as fresh, any meat, poultry, game, fish, or shellfish which contains any substance or article possessing a preservative or coloring character or action; making the same a misdemeanor, and to prescribe penalties and punishment for violations, and the means and the methods of procedure for the enforcement thereof," approved the twenty-eighth day of March, Anno Domini one thousand nine hundred and five:

Nor the act, entitled "An act providing for the regulation of the manufacture and sale of distilled and fermented vinegars; prescribing their standard to prevent the adulteration of the same; providing for the enforcement thereof, and punishment for the violation of the same," approved the eighteenth day of June, Anno Domini one thousand eight hundred and ninety-seven;

Nor the amendment thereto approved the twenty-first day of May, Anno Domini one thousand nine hundred and one, entitled "An act to amend the first and second section of an act, entitled 'An act providing for the regulation of the manufacture and sale of distilled and fermented vinegars; prescribing their standard to prevent the adulteration of the same; providing for the enforcement thereof, and the punishment for the violation of the same,' approved the eighteenth day of June, Anno Domini one thousand eight hundred and ninety-seven, so as to provide that vinegar made wholly from grapes, apples, or other fruits shall not be required to contain an acidity of four per centum;"

Nor the act, entitled "An act to prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese; providing rules and regulations for marketing and branding the same; providing for the enforcement of this act; prescribing penalties for its violation," approved the twenty-third day of June, Anno Domini one thousand eight hundred and ninety-seven;

And the amendment thereto, approved the second day of May, Anno Domini one thousand nine hundred and one, entitled "An act to amend section two of an act, entitled 'An act to prevent fraud and deception in the manufacture and sale of cheese, and defining what shall constitute the various grades of cheese; providing rules and regulations for marking and branding the same; providing for the enforcement of this act; prescribing penalties for its violation,' approved the twenty-third day of June, Anno Domini one thousand eight hundred and ninety-seven;"

Nor the act, entitled "An act regulating the manufacture or sale of fruit syrups; providing for the enforcement thereof; and to repeal an act, entitled 'An act relative to adulteration of natural fruit juice, and providing penalties for violations thereof,' approved the second day of May, Anno Domini one thousand nine hundred and one," approved the twenty-sixth day of April, Anno Domini one thousand nine hundred and five:—

All of which acts shall remain in full force.

Approved—The 13th day of May, A. D. 1909.

EDWIN S. STUART.

Commonwealth  
vs.  
Myer Gross.

{ In the Court of Quarter Sessions  
of Dauphin County.  
No. 61 January Sessions, 1910.  
Charge: Selling baking powder  
containing alum in violation  
of the provisions of Act No.  
292, approved the 13th day of  
May, 1909.

By Mr. Barton:—

The Court is respectfully requested to quash the indictment on the following ground:

### MOTION TO QUASH THE BILL OF INDICTMENT.

To the Honorable, the Judges of said Court:

The defendant, by his counsel, respectfully moves the Court to quash the indictment in this case, being an indictment framed under the Act of Assembly of the State of Pennsylvania, approved May 13, 1909, P. L. 520, for the following reasons:

First. Because said Act is unconstitutional and void.

Second. Because said Act, in so far as it relates to all dealers in food, is unconstitutional and void.

Third. Because said Act, in so far as it relates to all persons who sell, offer for sale, expose for sale or have in their possession with intent to sell food, is unconstitutional and void.

Fourth. That said Act, in so far as it refers to sellers of or dealers in food, is unconstitutional and void, being in conflict with

(a) Section 1, and

(b) Section 9

of Article I of the Constitution of the State of Pennsylvania.

Fifth. That said Act, in so far as it relates to sellers of or dealers in food, is unconstitutional and void, being in conflict with

(a) Paragraph 16,

(b) Paragraph 25, and

(c) Paragraph 27

of the 7th section of Article III of the Constitution of the State of Pennsylvania.

Sixth. That said Act, in so far as it refers to sellers of or dealers in food, is unconstitutional and void, in that it conflicts with the 1st section of the Fourteenth Amendment to the Constitution of the United States.

Seventh. That said Act of Assembly, in so far as it refers to sellers of or dealers in food, is in conflict with the provisions of section one of the Fourteenth Amendment to the Constitution of the United States, in that by the provisions of section five of said Act of Assembly certain privileges, immunities and exemptions are given to certain retail dealers within the jurisdiction of the State of Pennsylvania under certain circumstances, which privileges, immunities and ex-

ceptions are denied to all other retail dealers within the jurisdiction of the State of Pennsylvania under all circumstances and to all other persons within the jurisdiction of the State of Pennsylvania selling, offering for sale, or exposing for sale food, thus depriving all persons not granted such privileges, immunities and exemptions of the equal protection of the law.

Eighth. That said Act of Assembly does not include within its terms the article Baking Powder as an article of food, said baking powder being the article specified in the indictment as the article of food which had been offered for sale and sold.

Ninth. That said Act is unconstitutional and void because in violation of the Constitution of the State of Pennsylvania, and said Act is unconstitutional and void because in violation of the Constitution of the United States of America.

(Argument.)

By The Court:

Now, 20th of January, 1910, the motion to quash the bill of indictment, having been argued and considered by the Court, for the present purposes of this case, the motion to quash is overruled; the same question can be reached in a motion on arrest of judgment, and the Court is of opinion that it would not be able to pass upon the motion to quash at this time satisfactorily to ourself

Commonwealth  
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## BRIEF FOR COMMONWEALTH.

by

Hon. LYMAN D. GILBERT.

The defendant is charged with violating the provisions of Act No. 292, approved 13th May, 1909, by selling baking powder containing alum.

The Act in question is entitled:

“An Act relating to food; defining food; providing for the protection of the public health and the prevention of fraud and deception, by prohibiting the manufacture or sale, the offering for sale, or exposing for sale, or having in possession with intent to sell, of adulterated, misbranded or deleterious foods; prescribing certain duties of the Dairy and Food Commissioner with reference thereto; and providing penalties for the violation thereof.”

The first section of the Act declares:

"That it shall be unlawful for any person, firm, co-partnership, limited partnership, joint stock company or corporate body, by himself, herself, itself or themselves, or by his, her, its, or their agents, servants or employes, to manufacture, sell, offer for sale, expose for sale or have in possession with intent to sell, any article of food which is adulterated or misbranded within the meaning of this Act."

The second section defines the word "food," and declares that it "shall include not only every article used for food by man, but also every article used for, or entering into the composition of, or intended for use as an ingredient in the preparation of, food for man."

The same section also defines the term "person," as used in the Act and declares that it

"Shall include individuals, firms, co-partnerships, limited partnerships, joint stock companies and bodies corporate, as well as all officers, agents, servants, employes or others acting for any of the same, and shall be taken as applying in the singular or plural, as the case may require."

Section three declares that an article of food shall be deemed adulterated if it contain any added "\* \* \* alum."

The seventh section is in these words:

"Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than sixty dollars, nor more than one hundred dollars."

It, therefore appears:

That every person is forbidden to manufacture, sell, offer for sale, expose for sale, or have in possession with intent to sell, within this Commonwealth, any article of food which is adulterated."

That "alum" is an adulterated food.

But the defendant contends that, even if he did sell alum, he cannot be punished for its sale, because the Act in question is unconstitutional.

In reply, it may be said:

That the Act in question is a police Act.

This statement will be instinctively accepted by this Court, which so designated the legislation of this Commonwealth to prohibit the sale of oleomargarine, notwithstanding that was a confessedly innocent article of food. The action of this court was affirmed in the case of *Powell vs. Commonwealth*, 114 Pa. 265, and subsequently affirmed by the Supreme Court of the United States, in 127 U. S., 253.

The Act in question is an exercise of the police power of the State, which may be compactly stated to be the power of self-preservation.

The value placed upon the possession and right to exercise the police power is shown by the language of the Constitution, in Section 3 of Article XVI, which declares that the

"Exercise of the police power of the State shall never be abridged."

The exercise of that power is not abridged even by the Fourteenth Amendment of the Federal Constitution.



This is the language of the Supreme Court of the United States in the case above referred to:

"The present prosecution is founded upon the statute of May 21, 1885; and if that statute be not in conflict with the Constitution of the United States, the judgment of the Supreme Court of Pennsylvania must be affirmed.

"It is contended that the last statute is void, in that it deprives all coming within its provisions of rights of liberty and property without due process of law, and denies to them the equal protection of the laws; rights which are secured by the Fourteenth Amendment of the Constitution of the United States.

"It is scarcely necessary to say that if this statute is a legitimate exercise of the police power of the State for the protection of the health of the people and for the prevention of fraud, it is not inconsistent with that amendment; for it is the settled doctrine of this Court that, as government is organized for the purpose, among others, of preserving the public health and the public morals, it cannot divest itself of the power to provide for this object; and that the Fourteenth Amendment was not designed to interfere with the exercise of that power by the States."

127 U. S., 256.

It is to be noted, in passing, that the question, whether the protection of the people required the entire suppression of the business of manufacturing and selling oleomargarine, rather than its regulation, was declared by the United States Court in that case to be one of fact and public policy, which belongs to the legislative department to determine.

Reference to subsequent affirming decisions is not necessary, because the law, as above stated, continues to be the law of the land.

The unconstitutionality which the defendant claims to have discovered in the Act under which he is indicted must, therefore, be self-inflicted by the Constitution of Pennsylvania.

He undoubtedly seeks refuge under the provisions of Section 7 of Article III, which forbids the Legislature to pass any local or special laws on certain subjects; and his claim must undoubtedly be that the Act in question is not a general but a special law.

Even if we admit, for the purpose of this inquiry, that legislation for the exercise of the police power must be passed in conformity with the requirement of Section 7 of Article III of the Constitution, it is confidently asserted that, even under such limitation, the Act of 13th May, 1909, strictly complies with the constitutional requirements, and is a valid exercise of the legislative power of this Commonwealth.

I. As previously noted, the prohibition of the sale of alum applies to every person within this Commonwealth. The same remark can be made with respect to the doing of any other thing which is forbidden by that Act.

It must be borne in mind that the fact that the Act is universal in its application, applying in its prevention and prohibition to every person, natural or artificial, is the basis of this argument.

For that reason many authorities which have been cited by the defendant have no application in this case.



They construe and interpret statutes which do not include all people, but are only partial in their effect, by reason of exemptions they contain of certain people or classes of people from their operation.

Specific reference to each of those decisions is unnecessary.

The application of the above statement will show that they are without value in determining the question of the constitutionality of this Statute.

But it may be asserted by the defendant that the language of this statute of 13th May, 1909, is made unconstitutional by other provisions contained in that Act.

These provisions, to which the defendant specifically refers, are, it is to be assumed, contained in the fifth section, which is in the following language:

“When the Dairy and Food Commissioner, or his agent, shall obtain an article of food, or a sample or portion thereof, from any person, for the purpose of determining whether the same is adulterated or misbranded within the meaning of this act, and it shall be found that the said article of food is adulterated or misbranded within the meaning of this Act, then the Dairy and Food Commissioner shall proceed against the said person, from whose store, warehouse or other place of business said article, sample or portion thereof, shall have been obtained, for a violation of the provisions of this Act.

“But no prosecution shall be sustained, under the provisions of this Act, against a retail dealer for the selling, offering for sale, exposing for sale, or having in possession with intent to sell, of any adulterated or misbranded article of food, as defined herein, if the retail dealer from whom the said article of food, sample, or portion thereof, was obtained by the Dairy and Food Commissioner or his agent, can establish a guaranty, signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it.

“Said guaranty to afford protection shall contain the name and address of the manufacturer or wholesale dealer, or jobber or distributor, making the sale of such article of food to such retailer, and in such case the said manufacturer or wholesale dealer, or jobber or distributor, so as aforesaid giving such guaranty, shall be amenable to the prosecution, fines and other penalties which would attach, in due course, to the retailer holding such guaranty under the provisions of this Act, for a violation hereof; and every manufacturer or wholesale dealer, or jobber or distributor, giving a guaranty under the provisions of this Act shall be held responsible, and shall be proceeded against for the adulteration or misbranding of any article of food sold under such guaranty, and shall be subject to the penalties for the violation of the provisions of this Act. No such guaranty shall operate as a defence to prosecution for a violation of the provisions of this Act, if the retailer holding such guaranty shall continue to sell the same article of food after written or printed notice from the Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this Act.”

“But if said person shall violate the provisions of paragraph six, section three of this Act, by having stored or transported or kept said article, in said paragraph mentioned, in a way or manner to

render it diseased, contaminated or unwholesome, said person shall be proceeded against for a violation of the provisions of this Act; and it shall not be necessary for conviction that any article, sample, or portion thereof, shall be obtained by the Dairy and Food Commissioner, or his agent, as a condition precedent to prosecution."

II. The fifth section does not in any manner authorize any person to manufacture or sell alum, or to do any of the above-described acts, which the other sections of the law make unlawful.

III. It merely regulates the method of the enforcement of that Act.

Let it be remembered that the purpose of the Act is to safeguard the food of the public, and to prevent fraud and deception in the manufacture and sale of food to the public.

The Act would be useless if it did not provide means for prosecuting and detecting the fraud.

The Act now proceeds to select agencies for the detection and prevention of the fraud it condemns.

Its method is this:

(a) Every manufacturer violating this law is made subject to prosecution.

(b) Every wholesale dealer violating this law is made subject to prosecution.

(c) Every retail dealer violating this law is liable to prosecution, unless he has a guaranty

"signed by the manufacturer or wholesale dealer, or jobber or distributor, residing in the United States, from whom such article of food was purchased or procured, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it."

But he cannot rely upon such guaranty in the following instances:

1. After certain notice shall have been given him that such article of food is forbidden by this statute. This is stated in that Act in these words:

"No such guaranty shall operate as a defense to prosecution for a violation of the provisions of this Act, if the retailer holding such guaranty shall continue to sell the same article of food after written or printed notice from the Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this Act."

2. Said retailer cannot rely upon that guaranty if he shall violate the provisions of paragraph six, section three of the Act,

"By having stored or transported or kept such article, in said paragraph mentioned, in a way or manner to render it diseased, contaminated or unwholesome."

The sixth paragraph of section three is this:

"If it (an article of food) consists of, or is manufactured in whole or in part from, a diseased, contaminated, filthy or decomposed substance, either animal or vegetable; or an animal or vegetable substance produced, stored, transported or kept in a way or manner that would render the article diseased, contaminated, or unwholesome; or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter."

It is manifest that the thought of the General Assembly in passing, and the Governor in approving, this Act of Assembly, was, so far as is now pertinent, the following:

1. The manufacture, or the sale, or the offering to sell, or exposing for sale, of a food article containing alum was unlawful. No one should be allowed to do any one of these acts.

2. The manufacturer of such an article knows its composition, and shall be held liable for his act in producing such article. Such manufacturing is, if not his sole, at least an important, occupation.

3. The wholesale dealer shall, if he does any of the above-mentioned acts, be liable to the punishment the act provides. In the case of such a person it is to be remembered:

(a) His dealing with the manufacturer is either his chief or his exclusive occupation.

(b) He, next to the manufacturer, is the agent for the distribution of the prohibited articles over large areas.

(c) His business being that of wholesaling, it is to be assumed that he deals directly with the manufacturer. His business is important to the manufacturer, and he probably comes, or can come, into personal or direct relations with the manufacturer, which the retailer cannot do. He has an opportunity of gaining a knowledge of the character of the article thus purchased, which the retailer never has. If he avails himself of his opportunity, he knows the article is prohibited. If he does not avail himself of the opportunity, he neglects his duty, and is liable for its punishment. Standing, as he does, almost on a parity with the manufacturer, he can properly be held, for the purpose of protecting the public health, to have learned, or to have neglected to learn, of the unlawful character of the article that he wholesales. The requirement that he shall, under all circumstances, fully discharge this duty to the public is one upon which the public has the right to insist.

4. The retailer of such an article is always liable for prosecution, except as above seen, in the following instances:

(a) If he can produce a guaranty signed by the manufacturer or wholesaler, or jobber or distributor, residing in the United States, from whom the same was purchased or procured, to the effect that the said article was not adulterated or misbranded within the meaning of the Act.

But the manufacturer or wholesaler, or jobber or distributor, signing such guaranty, must, as above stated, be a resident of the United States.

If such manufacturer, wholesaler, or jobber or distributor is not a resident of the United States, then the guaranty which such retailer has received does not exempt him from prosecution.

This exception applies to all retailers. Its purpose was to substitute for punishment, and to secure the punishment of, the manufacturer or wholesaler, or jobber or distributor, who put in course of distribution the prohibited articles, provided he was amenable to the criminal process of the Court within which the prosecution should be commenced. He would be within that jurisdiction if he were a resident of Pennsylvania. He would be amenable to that jurisdiction if he were a resident of some other state, from which his return to this State could be secured under requisition proceedings.



That such is the intention of the purpose of the statute is shown by this language:

“And in such case the said manufacturer or wholesale dealer, or jobber or distributor, so as aforesaid giving such guaranty, shall be amenable to the prosecution, fines, and other penalties which would attach in due course, to the retailer holding such guaranty under the provisions of this Act, for a violation thereof; and every such manufacturer or wholesale dealer, or jobber or distributor, giving a guaranty under the provisions of this Act shall be held responsible and shall be proceeded against for the adulteration or misbranding of any article of food sold under said guaranty, and shall be subject to the penalties for the violation of the provisions of this Act.”

(b) The retailer of such an article is liable to prosecution even if he has such a guaranty, provided he shall continue to sell the same article after written or printed notice shall be given him by the Dairy and Food Commissioner, or his agent, that such article is adulterated within the meaning of the Act in question.

The language of that Act on this subject is this:

“No such guaranty shall operate as a defense to prosecution for a violation of the provisions of this Act, if the retailer holding such guaranty shall continue to sell the same article of food after written or printed notice from the Dairy and Food Commissioner, or his agent, that such article is adulterated or misbranded within the meaning of this Act.”

The thought is that if the retailer has actual, or what is equivalent to actual, knowledge that the article in question is adulterated within the prohibition, and sells it, or treats it as an article for sale, he shall be deemed and treated as a violator of this law.

(c) The retailer of such an article is liable to prosecution, if he shall have

“Stored or transported or kept said article, in said paragraph mentioned (in paragraph six of section three), in a way or manner to render it diseased, contaminated or unwholesome \* \* \* .”

In such instance the retailer either negligently or wilfully has added to the unwholesomeness of the article in question, and for that reason has offended against the laws of health, and is held to be a violator of this law.

IV. The law classifies offenders against its provisions.

Its classification is this:

- (a) Manufacturers;
- (b) Wholesale dealers;
- (c) Retail dealers.

If it be contended that the exemption of certain retail dealers coming within the exception above named amounts to further classification, it can, for the sake of this argument, be conceded that there is a sub-classification of retailers into those having and those not having the guaranty above mentioned.

V. Such classification can be lawfully made.

The legislative power to classify, even for purposes of taxation, was vigorously denied soon after the adoption of the present Constitution. But repeated decisions in these prosecutions have affirmed

the right of the legislature to make classification, upon a principle which is thus judiciously stated:

"Classification is a legislative question, subject to judicial revision only so far as to see that it is founded on real distinctions in the subjects classified, and not on artificial or irrelevant ones, used for the purpose of evading the constitutional prohibition. If distinctions are genuine, the Courts cannot declare the classification void, though they may not consider it to be on a sound basis. The test is not wisdom, but good faith in the classification."

Seabolt vs. Comrs. of Northumberland County, 187, Pa., 318.

Wheeler vs. Philadelphia, 77 Pa., 338;

Lloyd vs. Smith, 176 Pa., 213;

In re Sugar Notch Borough, 192 Pa., 349;

Commonwealth vs. Gilligan, 195 Pa., 504.

It may be instructive to note the concluding judicial language of the above decision:

"Undoubtedly many acts have been passed whose framers intended to evade the constitutional prohibitions. These the Courts have always unhesitatingly struck down, and may safely be relied on to continue to do so. But where the legislative intent is not to evade the restriction, the Courts are not required to be astute in extending them over cases not really within the evil prohibited, though the form may have the appearance of coming within the literal words of the Constitution.

\* \* \* \* \*

"It may, therefore, be taken as settled law that in cases of this character the Courts will look beyond the mere form of the Act, and examine its true intent and affect, in the lights of the purpose of the constitutional restriction."

Constitutional classification is, therefore:

- (a) A legislative question;
- (b) Subject to judicial revision;
- (c) But that judicial revision extends only so far as to see that the classification

"Is founded on real distinctions in the subjects classified, and not on artificial or irrelevant ones, used for the purpose of evading the constitutional prohibition."

These things are involved:

(a) The legislative intent in making the classification must be disclosed by the language of the classification Act.

(b) The constitutionality of such a classification involves its comparison with matters outside of that statute.

Accepting the above as the true statement of the test to which the question of the constitutionality of a classification Act must be subjected, it is with confidence asserted that the classification made by this Act satisfies every constitutional requirement.

It will be noted that the prohibition contained in the Act in question is against the manufacture or sale of an article of food containing alum.



The only persons who can commit that offense are:

- (a) Manufacturers of the prohibited article; or
- (b) Sellers of that article.

If such an article was not manufactured, there could be no violation of the statute.

If there was no sale of the manufactured article, there would be practically no distribution of the forbidden article.

In order to enforce the provisions of the Act and prevent fraud and deception, it was necessary for the Legislature to devise an effective method of proceeding against manufacturers of such an article and against the sellers.

Manufacturers and sellers of such article are, therefore, the only persons against which the provisions of the Act are directed, and they constitute the only persons who could offend against it.

Therefore, the whole class of offenders is made up of manufacturers and of vendors.

There have been various Acts passed in times predating and succeeding the adoption of the Constitution, which classified all the vendors of articles within this Commonwealth.

Reference has been, and will be, made to the legislation taxing vendors, because it has been declared to embrace all vendors, and its classifications have been decided to be constitutional, as will be hereafter shown. But the reference thus made has been to adopt the classifications thus judiciously sanctioned, in order to select the agencies to reach all vendors of goods, wares and merchandise, in order to prevent the commission of fraud against the provisions of the Act in question.

As already shown,

- 1. Manufacturers form a complete class;
- 2. Wholesale dealers form a complete class;
- 3. Retail dealers are thus sub-classed:

(a) Retailers selling upon guaranty from the manufacturer, wholesaler or jobber;

(b) Retailers selling without such guaranty.

The case of *Norris Bros. vs. Commonwealth*, 27 Pa., 494, involved the construction of the mercantile tax imposed by the Act of April 22, 1846. That Act imposed a tax upon all dealers in American goods, etc., and upon all persons concerned in the manufacture of such goods, etc., who shall *keep a store* for the sale of them, except

“Mechanics who shall keep a store or warehouse at their own shop or manufactory for the purpose of vending their own manufactures exclusively.”

This statute sub-classed manufacturers.

This classification ante-dated the present Constitution.

Such classification could, therefore, not have for its purpose the evading of any constitutional prohibition against classification, for none existed.

That decision thus defined a dealer:

“A dealer, in”

(a) “the popular, and therefore in”

(b) “the statutory sense of the word,”

“Is not one who buys to keep or makes to sell, but one who buys to sell again.”

It is to be noted that the statutory meaning is made to follow the popular meaning of the word "dealer."

That case decided that parties manufacturing locomotives and selling them only at their own shop or manufactory are not liable to the mercantile tax imposed upon dealers by the Act of 22d April, 1846.

This case, therefore, exhibits the following:

1. An Act of 1846, taxing:
  - (a) Dealers as a class;
  - (b) Sub-classifying manufacturers for taxation purposes.
2. An interpretation of that Act made by the Supreme Court in 1856, recognizing, on popular as well as statutory grounds, these distinct classifications of "dealer" and "manufacturer."

This distinction between dealers and manufacturers is affirmed in *Commonwealth vs. Campbell* 33 Pa., 380.

The case of *Commonwealth vs. Gormly*, 173 Pa., 586, was an appeal from the assessment of a mercantile tax. The Court decided that

"The defendant is neither a manufacturer nor a dealer, in the strict sense of the latter term."

The features of this decision, of present use, are these:

- (a) The distinction in classification between dealers and manufacturers is preserved;
- (b) The judicial distinction that the defendant was neither a "manufacturer" nor a "dealer," depended, in large degree, upon matters outside of the statute in question;
- (c) This decision was rendered in 1896, and the classification it sanctioned could not, therefore, have been unconstitutional.

Many decisions could be cited to prove the constitutionality of such classification.

But they are not separately cited, as the present state of the law is sufficiently declared in the decision of

*Knisely vs. Cotterel*, 196 Pa., 614.

The subject matter of that decision was the constitutionality of the Act of May 2, 1899.

The Act was entitled:

"An act to provide revenue by imposing a mercantile license tax on vendors or dealers in goods, wares and merchandise, and providing for the collection of said tax."

In its first section, it enacts:

"That from and after the passage of this Act,"

"each retail vender of or retail dealer"

"in goods, wares and merchandise"

"shall pay an annual mercantile license-tax of one mill additional on each dollar of the whole volume, gross, of business transacted annually."

"Each wholesale vender of"

"or wholesale dealer in"

"goods, wares and merchandise"

"shall pay an annual mercantile license-tax of three dollars, and all persons so engaged shall pay one-half mill additional on each dollar of the whole volume, gross, of business transacted annually."

"Each dealer in or vendor of goods, wares and merchandise"

"at any exchange or board of trade"

"shall pay a mercantile license-tax of twenty-five cents on each one thousand dollars worth, gross, of goods so sold."

The second section of that Act provided:

"That all persons who shall sell to dealers in or vendors of goods, wares and merchandise, and to no other person or persons, shall be taken, under the provisions of this Act, to be wholesalers; and all other vendors of or dealers in goods, wares and merchandise shall be retailers, and shall pay an annual license-tax as provided in this Act for retailers."

The constitutionality of this Act was contested upon the ground of its lack of uniformity upon the same class of subjects upon which the tax was laid.

This contention was overruled. The tax was sustained upon the ground that it was not specifically on property, but on the business of selling, and the legislative classification was constitutional.

But in passing, it may be remarked that the Court used this language:

"Even regarding it as a tax upon property directly, it could be sustained as a classification according to the use and purposes for which the property is held."

The portion of that decision directly pertinent is this:

"The division of vendors into"

"wholesale"

"and retail"

"is, perhaps, the most obvious and familiar that could be made."

"It is founded on"

"a known or presumed difference in the percentage of profit to bulk of sales,"

"and has been on our statute-books for more than a century."

Note the reason for the division:

(a) A known or presumed difference in the percentage of profit.

There is no statutory mention or reference to such a reason for this division. It is a judicial recognition of matters outside of the statute.

(b) That such division has been on the statute-books for more than a century.

The latter reason is of value as showing that this division of dealers into wholesale and retail was not adopted to escape any provision of the present Constitution.

"It is equally clear that the"

"sub-classification"

"of dealers at an exchange or board of trade"

"is not based merely on location, as complained of, but on the mode of sale. Such dealers are not supposed, in the ordinary course of their business, to carry an actual stock of goods in a store of defined location, with its accompaniment of rent, clerk-hire, expenses of

delivery, etc., but to deal largely, if not entirely, on sample, orders, bills-of-lading, warehouse-receipts, etc., upon which title passes without actually handling goods."

NOTE:

(a) This is a sub-classification of retailers;

(b) This sub-classification rests upon the difference in the method in which retailers transact their business;

(c) The principles governing and justifying such classification are not mentioned in any statute; they are matters of judicial ascertainment and recognition.

"If such differences in the manner of transacting the business exist, they are legitimate basis for classification;"

"and whether they do, in fact, exist is a question for legislative determination."

"We are unable to see that the classification in the Act before us violates the constitutional requirement of uniformity."

*In re Registration of Campbell*, 197 Pa., 581, the Court uses this language:

"The State may choose its own agents, in its own way, to carry out its commands in regard to the taxing or police or other general powers.

"*Knisely vs. Cotterel*, 196 Pa., 614."

This classification not only does not exceed, but it does not even reach, the limit of constitutional classification. The Act is not only to forbid the manufacture and sale of prohibited articles of food, but to prevent fraud and deception in respect to such food articles.

The Legislature said, if the manufacture can be prohibited, there would be no articles to sell.

It could say to the manufacturer:

(a) You have made these articles, and have knowledge of their unlawfulness.

(b) You have made them with the guilty intent of selling them.

(c) Without your act, the crime against the public health could not have been committed.

(d) You are the chief offender, and you shall suffer a separate punishment, and that in proportion to your offense.

This legislative classification would certainly have been constitutional. But this increased penalty was not imposed upon manufacturers.

The Legislature, fearing that some manufacturers might violate the law, next considered how the prohibited article of food could be prevented from reaching the public.

Necessarily, the only method of distribution would be through sales. The natural question would be, Do all vendors sell in the same manner?

The answer is that there is a difference between methods of sale, and this distinction has long been observed, and is not only statutory, but popular knowledge.



The wholesale vendors or jobbers the Legislature could have treated as more effective agencies in the distribution, with greater opportunities than retail vendors have for making fraudulent sales.

They have exceptional opportunities to conceal their sales from the Dairy and Food Commissioner, and escape his vigilance.

Clearly, then, wholesale vendors and jobbers could have been separately classified, and for these reasons they could have been more severely punished than retail dealers, whose offenses and chances of escaping detection were comparatively few. But this increased penalty was not imposed upon wholesalers and jobbers.

The only remaining vendors to be considered were retailers. Their classification was imperative, if unlawful sales were to be prohibited.

The Legislature recognizes that they were less harmful agents than either wholesalers or manufacturers in perpetrating fraud and deception upon the public. But, believing that they might be made agencies to help prevent the commission of such offenses against the law, it made, as already shown, this classification of retailers:

(a) Those who assist the Commonwealth to prevent the violation of the law and the perpetration of fraud and deception against it, by revealing the names of such persons as misled them with respect to the nature of the prohibited article, and by furnishing the evidence necessary for the conviction of such persons.

(b) Such retailers who do not offer such aid to the Commonwealth, and whose sales further the distribution to the public of forbidden articles of food.

There is a plain distinction between the actions of such classes of retailers, and if the Commonwealth were required to treat them alike not only would the distinction between innocent and guilty intent be obliterated, but the Commonwealth would be denied the use of an effective agency to prevent the commission of fraud and deception in the sale of prohibited articles.

The Legislature would have been justified in distinguishing between retailers of such diverse conduct, and in inflicting a severer punishment upon those retailers who refuse to assist in enforcing the law, than it did upon such retailers as give such aid.

Before summing this argument, it is proper to direct attention to the case of

*Commonwealth vs. Kevin*, 202 Pa., 23,

which states the rule of construction to be given to statutes like that one now in question.

The Act there considered was that of June 26, 1895 (P. L. 317).

The title of the Act is:

“An Act to provide against the adulteration of food, and providing for the enforcement thereof.”

The decision declares:

“The object of the statute is to protect the public health by securing pure food, and to prevent fraud and deception in the manufacture and sale of adulterated articles of food. The purpose also in the passage of this Act is most commendable, and the statute should receive a construction by the Courts that will fully and effectively accomplish the object of its enactment.”



Note this language, that

"The statute should receive a construction by the Courts that will fully and effectively accomplish the object of its enactment."

This effectually disposes of the claim of the defendant that the statute is penal, and, therefore, should be strictly construed.

The judicial decision that it should be construed in such manner that it

"Will fully and effectively accomplish the object of its enactment," is supported by settled principles of law and many affirming opinions.

As was said in *Short vs. Hubbard*, 2 Bing., 349-355,

"There is no impropriety in putting a strict construction on a penal clause and a liberal construction on a remedial clause in the same Act."

The doctrine of qualification of the rule of strict construction is thus stated in Endlich on the Interpretation of Statutes, 337:

"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important; and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonizes with the context, and promotes in the fullest manner the policy and object of the Legislature. It is said that words descriptive of an offense or its punishment, will not be bent on the one side or the other. They are to be construed by reference to the subject-matter, and the context, the apparent policy and the objects of the Legislature; by the whole context, not by a mere division into sections, so as to give effect to the objects and intent of the whole, as well as by a comparison of statutes *in part materia*, and consequently, the old law, the mischief and the remedy. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent; and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intentions. They are, indeed, frequently taken not in their strict technical sense, if that would defeat, but in a more popular sense, if that will uphold, and carry out, the intention of the Legislature, but in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Lord Coke's words, to suppress the mischief and advance the remedy. Nor is the rule of strict construction ever violated by permitting the words of a statute to have their full meaning, or by the application of common sense to its terms, in order to avoid an absurdity. They are, therefore, to be held to embrace every case within the mischief, if also fairly within the words read with such corrections as the Court may make to avoid insensibility."

The authorities cited in support of the above statements will, upon examination, be found to demonstrate their correctness.

The modern tendency in the construction of a statute like the one in question is thus stated, in section 339 of Endlich on the Interpretation of Statutes:

"The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more strict regard to the language, and criminal statutes, with a more rational regard to the aim and intention of the Legislature, than formerly. \* \* \* But it (the rule of strict construction) yields to the paramount rule that every statute is to be expounded according to the intention of them that made it, and that all cases within the mischief aimed at are to be held to fall within its remedial influence."

The authorities sustaining these principles of law are amply stated by the author, and need not here be repeated.

In the distant year of 1843, the rule of construction of a penal statute was thus stated by our Supreme Court:

"But it cannot be maintained that a penal statute is to be construed strictly in all its parts, or that the words of it are to be narrowed in their operation, even in those parts of it which define the offense and annex the penalty. \* \* \* The true rule is, that words descriptive of an offense, or the punishment of it, are not to be bent to the one side or the other."

Per Gibson, C. J., the *Mayor vs. Davis*, 6 W. & S., 269-277.

The present state of the law, as above mentioned, is this:

"It is, however, the object of the construction of penal as of all other statutes, to ascertain the true legislative intent; and while the Courts will not, on the one hand, apply such statutes to cases which are not within the obvious meaning of the language employed by the Legislature, even though they may be within the mischief intended to be remedied, they will not, on the other hand, apply the rule of strict construction with such technicality as to defeat the purpose of ascertaining the true meaning and intent of the statute."

26 A. & E. Enc. L., 2d ed., 659.

What this argument thus far proves may thus be stated:

1. It is a police statute to provide for the protection of the public health and the prevention of fraud and deception in the manufacture or sale of various food articles, including those containing alum.

2. The legislative purpose in passing this Act

"is most commendable, and the statute should receive a construction by the Courts that will fully and effectively accomplish the object of the enactment."

That, it is respectfully suggested, means this:

The intention of the Legislature being to safeguard the public with respect to its food, and to prevent fraud and deception in the manufacture and sale of unwholesome food, such intention is most commendable, and the legislation providing a method to effect such purpose should be judicially construed in such manner as will fully and effectively accomplish the legislative purpose.

After such construction shall have been given to the Act, then, and not until then, will the rules governing prosecutions for criminal offenses be applied in favor of those who offend against this legislation as thus judicially interpreted.

3. In order to make that prohibition effective and that protection complete, it was necessary to stop the manufacture and sale of such prohibited articles, and, therefore, it made certain classifications.

These were:

- (a) Manufacturers;
- (b) Wholesalers;
- (c) Retailers, sub-classifying dealers into those selling and those not selling upon written guaranty made to them by those who had sold them the articles in question.

4. The classification of manufacturers is constitutional.

5. The classification of wholesalers is constitutional.

6. The classification of retailers is constitutional.

7. A sub-classification of manufacturers is legal. This classification rests upon the difference in manner in which the manufacturers vend their wares.

8. A sub-classification of retailers is constitutional, resting upon a difference in their method of selling their wares.

9. To each member of the sub-classification of retailers who sell without a written guaranty the right is given to pass into the other sub-classification of retailers, by merely requiring such guaranties to accompany or precede their purchase of the articles in question.

10. That such classifications antedated the adoption of the present Constitution, and were not only not made to evade its provisions, but were adopted solely as the best method, in the legislative judgment, of insuring to all the citizens of this Commonwealth protection against the crime of selling articles of food which the Legislature declared to be injurious to public use.

11. That such classifications were adopted in the present Act, not for the purpose of discriminating against, or in favor of, any citizen or citizens of this Commonwealth, but because they were divisions of all vendors of goods, wares and merchandise in this Commonwealth, and included every vendor of any of said articles.

It has been contended on behalf of the defendant that the doctrine of classification practically applies to no subject-matter except that of taxation.

It is sufficient to say that this statement overlooks, and is overthrown by, the fact that classification has been sanctioned in the following instances, all of which are governmental in their character:

- (a) Cities;
- (b) Counties;
- (c) Boroughs;
- (d) Townships.

Citations of statute-law and of judicial decisions are alike unnecessary to prove the correctness of the above statement. Its truth is well known.

It has been orally contended by the defendant that such classification has been made unconstitutional by the Fourteenth Amendment to the Constitution.

In support of that numerous authorities have been cited. But as the representative one is that of *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., 679. its consideration will afford sufficient reply to this branch of the argument of the defendant.



The pertinent part of that decision is this:

"A State may, in its wisdom, classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in the United States Court, so long as the classification does not invade rights secured by the Constitution of the United States. But different considerations control when a State, by legislation, seeks to regulate the enjoyment of rights and the pursuits of callings connected with domestic trade. In prescribing regulations for the conduct of trade it cannot divide those engaged in trade into classes and make criminals of one class if they do certain forbidden things, while allowing another favored class engaged in the same domestic trade to do the same things with impunity. It is one thing to exercise the power of taxation so as to meet the expense of government, and at the same time indirectly to build up or protect particular interests or industries. It is quite a different thing for a State, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute, making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates."

This quotation states with the utmost possible strength the fullest contention of the defendant in this respect.

The complete answer to that is this:

The sale of the articles prohibited by the law in question is absolute and universal. Every person is forbidden, and no person is permitted, to make any such sale.

The classification is adopted merely to secure the full and complete enforcement of the Act.

The difficulties of detecting violators of the law were self-evident to the Legislature, and, therefore, its treatment of the retailer was for the sole purpose of acquiring information which would enable it effectively to discover and prevent the manufacture and sale of the prohibited articles.

Nowhere is it declared lawful for any retailer to make a sale which any manufacturer or other dealer is prohibited from making.

The law merely said to a retailer, if you bought from a vendor, and if you sought to comply with the law by requiring your vendor to give you a written guaranty that the article he sold you complied with legal requirements, and that vendor lives within the United States, and you will disclose his name and surrender the guaranty so that he can be prosecuted for the offense which he induced you to commit, you shall not be punished for your first offense against the law.

This is placing a premium upon confession; not for the purpose of exempting any person as a criminal, but to secure a more effectual compliance on the part of all the citizens of this Commonwealth with the requirements of this law, and thus prevent the manufacture and sale of unwholesome articles of food.

The premium, if such it could be called, given to a retailer was conditioned solely upon his disclosure of the name of his vendor, and, as observed, it thereupon became official duty to prosecute that vendor. If that vendor did not reside within the United States, and was thereby exempt from prosecution, the disclosure of his name by the retailer was of no avail to the retailer.

It is further alleged on behalf of the defendant that the classification is open to this objection:

That the retailer is not protected even by a guaranty, unless he be the retailer from whom the Dairy and Food Commissioner, or his agent, purchased the prohibited articles.

The answer to that is twofold:

1. Section five is the only portion of the Act on the subject of guaranty which the retailer can produce to obtain his immunity from prosecution for the first offense. Even if such immunity, upon such conditions and for such purposes, were unconstitutional, the entire section could be omitted, and the Act be operative, and, therefore, constitutional, even under the claim of the defendant. The remaining sections of the Act contain the prohibition, declare the offense and provide the punishment, without requiring the assistance of its fifth section.

2. This argument of the defendant not only fails to refer to, but entirely overlooks, the following sections of the Act:

"Section 8. The Dairy and Food Commissioner of the State shall be charged with the enforcement of the provisions of this Act, and shall make rules and regulations for the proper enforcement thereof, and shall cause such rules and regulations to be published in the official bulletin in the issue immediately following the preparation of the same.

"Section 9. All fines and penalties imposed and recovered for the violation of any of the provisions of this Act shall be paid to the Dairy and Food Commissioner, or his agent, and by the Dairy and Food Commissioner be paid into the State Treasury, for the use of the Commonwealth."

The power of enforcing that statute, and, therefore, of commencing the prosecutions thereunder, is entrusted to the Dairy and Food Commissioner.

In his Department and for the discharge of his official duties, he has no greater power than is committed to any of the following officers:

- (a) The Attorney General;
- (b) The Auditor General;
- (c) The Secretary of Internal Affairs;
- (d) The State Live-Stock Sanitary Board, under the Acts of 1895 and 1897;
- (e) The Factory Inspector, under the Act of June 3, 1893 (P. L. 277), and the Act of May 29, 1901 (P. L. 325);
- (f) Mine Inspectors, under the provisions of the Act of 15th May, 1893 (P. L. 71), which is the Bituminous Mine Act, and also to Anthracite Mine Inspectors, under the Act 2d June, 1891 (P. L. 190);
- (g) Also to the Dairy and Food Commissioner, under the Act of 1st June, 1907 (P. L. 386).



This latter Act was referred to with approbation by the counsel for the defendant, who stated that its provisions should have appeared in the Act in question, with the exception of that feature upon which it was declared unconstitutional.

The unconstitutional feature was that the Act attempted, by mere reference to title, to include within its provisions the provisions of the National Food and Drugs Act, and rules and regulations thereof.

The examination of that Act shows that prosecution could not have been commenced by any person other than the Dairy and Food Commissioner.

The defendant orally insisted that to commit to the Dairy and Food Commissioner the power to enforce this Act, and, therefore, to be the person to commence prosecutions for its violation, made the Act unconstitutional, because it was in violation of the Fourteenth Amendment of the Federal Constitution.

The answer to that is this:

It certainly is within legislative power to create the office of Judge, to be filled by a single person. The occupant of that office will then be the only person to whom the right of trial is committed.

The Legislature certainly has the right to create the office of a magistrate, who shall have the right to hear criminal prosecutions, which other citizens do not enjoy.

It certainly has the right to create District Attorneys, and give to them the sole power to try criminal cases.

This is merely the selection of agencies for administering government. Their creation does not in any manner infringe the rights of other citizens, although other citizens are not allowed to discharge the duties of such officials.

It is true, the Dairy and Food Commissioner might not fully discharge his official duties. But the other officials, just mentioned, might fail in the same manner.

Responsibility for conducting human government must be lodged somewhere, even though at times official duties are not legally performed.

This argument would absolutely destroy the method of administering the duties of the Auditor General and other State officials to which specific reference has been made, and reduce the power of the people of Pennsylvania to create and select their own officers for the administration of their affairs to such an extent that they would be practically powerless to protect themselves and conduct their government.

It is well known that an investigation of the character of food manufactured, or manufactured and sold, is complicated, and an expensive one. The burden properly rests upon the Commonwealth to prove that the suspected article is an unlawful one. To make that proof, expensive agencies must be employed. Chemists of note and ability must be secured, who will not only satisfy themselves that the article is unlawful before proceedings are commenced against its manufacturer or seller, but also be able to encounter the numerous chemists which large manufacturing and selling interests are able to employ, and convince a jury that a crime has really been committed. It is also due the manufacturer and seller that such pro-

ceedings should not be commenced against him until scientific and legal testimony has been secured to show his actual guilt.

If the enforcement of this law were not left to an officer of the Commonwealth, it would, for the reasons above stated, either not be enforced, or manufacturers and sellers would be harassed and annoyed by suits commenced against them by irresponsible parties, for possibly doubtful motives, and upon probably insufficient evidence. Their safety from unjust attack lies in committing the power of prosecution to an officer of this State, who acts under oath, upon official responsibility, whose actions are proclaimed to the entire people, and who can be removed and punished if he does not observe the law.

There certainly is no violation of the Fourteenth Amendment of the Federal Constitution by the adoption of such a method for enforcing a police Act of this Commonwealth.

The reasons for this statement are these:

(a) When the Legislature declares what shall be a crime, no person has the natural right to become a prosecutor of any offender against that law. The utmost he can ask is equal political rights with his fellow-men. If he is deprived of no political rights which they enjoy, then there is no discrimination made against him, and, therefore, there is nothing of which he can complain, and nothing for any provision of the Federal Constitution to redress. All he can ask is a parity of privilege and treatment.

(b) This law places all persons in the same position. Their treatment is equal. The right to commence proceedings under this Act is not extended to any citizen or citizens. It is denied to them all. There is no exception. Therefore, there is no discrimination against any person. The duty of enforcing the law and the power to commence prosecutions rest entirely with an officer appointed for that purpose; and his duty and power with respect to this subject are no greater than the duty and power of other officers of this Commonwealth with respect to the matters committed to their care.

The defendant intimated, rather than stated, that if the power of prosecution was singly lodged with the Dairy and Food Commissioner, the law in this respect would be unconstitutional, because it transgressed the twenty-seventh section of Article III of the Constitution of Pennsylvania.

Let us briefly test that.

That section is in this language:

“No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity, but any county or municipality may appoint such officer when authorized by law.”

It is to be noted that the

“inspection or measuring of any merchandise, manufacture or commodity”

is not unlawful, as county or municipality could, when authorized by law, make appointments of officers for that purpose.

The prohibition this section contains is merely that a State office for such purpose cannot be created.

Plainly the thought of this section of the Constitution is this:

Inspection and measuring of the articles named may be made for county purposes; that is, for any purposes affecting the particular county. Inspection and measurement of any such articles shall not be made where the same affects the entire State.

As will hereafter appear, the reason for this distinction is that the inspection or measurement for State purposes affected interstate commerce, to the prejudice of this State. Inspection and measurement for county purposes did not affect such commerce, and was domestic and local in its result.

It is confidently asserted:

(1) That the Dairy and Food Commissioner is not such an officer. *Commonwealth vs. Warren*, 217 Pa., 163.

(2) That the duty he performs is not that of inspection or measurement.

An examination of the various statutes predating the adoption of this Constitution and those in existence at the time of its adoption, conclusively prove this.

The Act of April 15, 1835 (P. L. 393), is a comprehensive statute on the subject of the appointment of inspectors, and of their duties. The articles examined were either those exported or imported. Their personal examination and marking or branding were required as pre-requisites of sale. Those articles were not purchased from, or ceased to be the property of, their owners. The fees for the examinations and inspections of such articles, which were not, the property of the inspectors, were charged to, and collected from, their owners. This amounted to a restriction of trade, from which the trade of neighboring competing States was free. This is made plain by the debates of the Constitutional Convention; notably the remarks of Mr. J. Price Wetherill, who introduced this constitutional section, in Vol. 2, pp. 709, 710, *Debates on Constitution*, and Vol. 7, p. 451; also Mr. Biddle, of Philadelphia, in Vol. 2, p. 711; and of Mr. MacVeagh, Vol. 2, p. 725.

The duty of the Dairy and Food Commissioner is utterly unlike that performed by such inspectors, and is not in the nature of an inspection.

He is a purchaser of food commodities, for the purpose of enforcement of the Act alone.

He has no right to require their production before him, except upon the terms upon which the ordinary purchase is made. He has *no* power to compel their exhibition and production, except on the terms on which the ordinary customer makes his purchases. He is charged with the enforcement of the Act, and in enforcing the Act proceeds against persons after ascertaining that there has been a violation of the Act.

An inspector always proceeds *in rem.* against the thing itself either by condemning or by approving, and so marks the subject of his inspection so as to indicate either condemnation or approval. The basis of inspection implies the right and power of the inspector to condemn. No power of condemnation of property is given to the Dairy and Food Commissioner under this Act. His sole power is to prosecute persons who are guilty under the provisions of the Act.



The inspector examines and passes upon the property of the merchant, which the merchant is required to exhibit to him as a prerequisite of his right to sell.

The examination caused to be made by the Dairy and Food Commissioner is not that of the property of the manufacturer, wholesaler or retailer, but only of property which he has purchased in the ordinary and usual course of business.

There is not even the semblance of any official inspection, which requires a compulsory exhibition by the merchant or manufacturer of his own wares to an inspector before sale or disposal can be made of that property; and the inspector never acquires title to the property which is exhibited to him, but the title to the same remains with the owner thereof as fully and completely as if the inspection had not been made.

The Dairy and Food Commissioner has no right to require any such exhibition, and his power of securing such article is only that of the ordinary purchaser.

He has no power to condemn, or to confiscate, or to withhold from sale any article which he may deem to be prohibited under this law.

His sole power is to proceed against the manufacturer or seller of that article, and upon a repetition of the offense his duty is no greater in respect to its punishment than it was with respect to the first offense.

No method, it is submitted, could have been adopted, which leaves a seller or a manufacturer so free to deal with his goods and merchandise, and yet protects the public from the harm of the manufacture and sale of prohibited goods, more wise a one than this.

It is, therefore, respectfully submitted:

That the Dairy and Food Commissioner is not an inspector or measurer of merchandise, manufacture or commodity;

That the powers granted to, and exercised by, him are constitutional, and are no greater than those committed to other State officers for their discharge of equivalent duties;

That the law in question violates no provision of either the State or Federal Constitution;

That it is necessary for the protection of the public health, and that the methods for its enforcement are such as the Legislature was overwhelmingly justified in adopting;

That as the evidence shows the baking-powder in question is known to, and called by, the trade as alum powder, and a respectable and reputable body of chemists has testified that the article found in such powder is alum, their testimony should be accepted as sufficient reason for the judicial determination that the subject in question is statutory alum, even if the testimony of such chemists should be at variance with the testimony of other chemists of character and respectability.

No other construction will, it is respectfully submitted, conform to the decisions already cited, which declare that the interpretation given to the language of a statute of this character must be such as "will fully and effectively accomplish the object of its enactment."



